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LABOR'S PART IN WAR AND RECONSTRUCTION

MARSHALL E. DIMOCK
U. S. Department of Justice

I

Nothing is of greater importance to national defense than the morale of those who do the actual work, the men who pump the petroleum, roll the steel, build the ships and planes. An ounce more of spirit along the assembly line is worth more than a correspondingly higher percentage of armaments in a clash of troops. This is because modern wars are won by industrial strength, a fact that we are almost tired of hearing repeated, but the truth of which we are observing with every passing month of the present war.

War industries require raw materials, trained leadership, and sufficient funds to support the costly effort. A nation needs all of these. But all depend for their success upon the efficiency and ardor of designers, foundrymen, and machinists. Do they put their minds and backs and hearts into their work? Or do they merely go through the motions?

Organized labor may be fitted into a war economy in one of several ways. The workers can be virtually enslaved, as in Poland, and forced to labor with armed sentries standing over them. This method has never proved very efficient. Another way, which Hitler and Mussolini are using, is to appeal to the emotions of patriotism, to work men into a frenzy which must then be sustained. This plan is successful only so long as the tide of battle is consistently favorable; when it changes, the effect is not unlike the day after a New Year's Eve party. The third approach is that which the United States and Great Britain have evolved, the method of satisfying labor that the rules which apply in peace-time will not be jeopardized during war-time—a program of voluntary coöperation in which labor itself engenders the fighting spirit which wins

wars. This formula, like democracy itself, is the hardest to put into effect and to maintain; but it has the unique advantage of providing a morale which has staying qualities. It insures a labor body which is nourished on good red meat rather than shots in the arm.

In the present conflict, each of these situations exists. At its close, which is most likely to emerge as a factor in world reconstruction? How can anyone say? No one knows which side will win, whether all the world will become involved, how exhausted the major combatants will be, or whether successful revolutions will not occur in some of the dictator countries. Nevertheless, taking into account the trend of development in recent years and weighing in the balance the leadership and other factors which enter into a final computation, some answer may be found that will help to guide us as a nation in the work that lies ahead.

If the dictator nations prevail, the rulers of the new European order may be expected to suppress any independent labor movement, because such activity cannot be tolerated under a monopoly of power. If, on the other hand, the democracies are victorious in the military issue, labor unions will continue their onward course of development toward a greater influence in the affairs of the nation and the world. To say that such a course is inevitable would be reckless exaggeration; but to say that it is natural under conditions of democracy is a truism, for the increased dignity and influence of the nation's workers is the upward surge of democracy itself.

Even if the trade-union movement were eclipsed following the war, however, its power and influence would not be lost. The forces within it are too strong to make such a prediction likely. If we may assume, as I do, that prognostication is for long periods, and that an institution with a history of steady development and strong leadership is likely to reappear, even if temporarily forced underground, then organized labor will emerge as a crucial factor in the statecraft of the century lying ahead.

Any individual or group is likely to exert influence if infused with the vitality which comes from being close to life's realities. The outstanding record of American business leadership is largely explained by this physical factor—the vitality of pioneers flowing in the sons of those who conquered a wilderness and built thriving communities. When the dominant group gets away from these life-giving forces, its influence wanes and may finally disappear, as it is superseded by a more virile strain. The operation of this cycle is

illustrated in the recent experience of Great Britain: the sons of aristocratic families did not pass muster in a time of grave national crisis, and hence into the breach have gone the close-to-the-earth sons of working families, the Morrisons and the Bevins.

The influence of earth-given virility reaches its peak of effectiveness when the individual or group acquires the competence and sophistication needed to compete successfully with those who would shape the nation's future. Barring accidents of fortune, this combination of qualities is well-nigh unbeatable. It is at this point that the labor leadership of Great Britain seems to be today and in the years just ahead. It is into this influential position that our own American labor leadership seems to be steadily progressing.

In a democracy, there is no compartment of life which is not the concern of the labor unions. They are first of all social units, providing wage-earners and their families with an outlet for their gregarious instincts, helping them to fulfil their fraternal and social cravings. Similarly, they are educative; for they train apprentices, test and elevate leaders, and encourage civic virtues. Their economic function is perhaps the most pronounced of all, because in the bargaining power they are able to muster is found the natural balance to the power of owners and managers, a power which would otherwise be vastly unequal now that the workers no longer own the tools of production. And finally, partly because workers have realized their reliance upon organization under changed technological conditions, labor unions have come to exert important political influence. Thus, in a democracy, labor unions are social, educative, and political as well as economic in their function. They are one of the plurality of governments which constitute a free state.

Although the scope of labor unions is potentially so universal, it will be realized, of course, that what they are able to accomplish depends upon the restrictions and opportunities of the political system in which they operate. Three main rôles may be distinguished. They may be in a position of protest against the existing order, not fully recognized, and hence seeking to cast aside restrictions and to gain full freedom of action. Or they may be fully recognized and free to act within broad limits, as they are within our competitive order of the day; so situated, their chief characteristic is that of a balance wheel in an equilibrium economy. Finally, in a system which does not depend upon a balancing of economic groupings but instead raises one or another group to supremacy,

the labor union may be a central organ of administration and control, merged with the government itself and sharing its monopoly of power. Examples of these three situations are Great Britain prior to the Taff Vale decision at the turn of the century, the United States today, and the U.S.S.R. today.

American labor is attached to this middle position. It wants influence, not supreme power. It wants *a* voice, not *the* voice. This is not to say, however, that it is content with what it now has or that it feels that its potential social contribution is being fully used.

II

The shape of things to come is revealed in part by the growing influence of labor leadership in war-time Britain.

At the outbreak of hostilities in September, 1939, a coalition almost solidly Conservative was in power and the Labor party, small and divided, was in opposition. The Government was one of older, more conservative men. The void caused by a "lost generation" of war victims, 1914–19, was never more apparent. Anthony Eden and Winston Churchill, despite the disparity in their ages, could agree that the leadership was lacking in vigor and adaptability. The Labor opposition, though small, contained among its command some men of outstanding ability, such as Herbert Morrison, formerly Minister of Transport and leader of the London County Council, and Major Attlee, one-time Postmaster-General. In addition to being numerically small in Parliament, however, labor suffered from divisions within its own ranks. Sir Stafford Cripps, brilliant barrister and parliamentary orator, had broken with the party command and was virtually ostracized. Far more ominous than this, however, was the long-standing rift between labor's trade union and parliamentary leaders, based upon the former's fear of political domination in a socialist state and the latter's thinly-veiled contempt of union officials' preoccupation with their union affairs and their resulting social shortsightedness. This disagreement in program and strategy, although usually kept from public knowledge, ever so often broke forth in full view, to the consternation of labor's rank and file and the glee of the Tories. Thus, politically speaking, it was a weak and divided Britain that declared war in September, 1939.

It was not long before labor troubles caused an acute retardation of the country's war effort. The seriousness of any failure to

coöperate can be easily calculated, for Britain was already alarmingly unprepared, and modern wars are won by industrial strength. As we have pointed out, industrial mobilization cannot boom unless organized labor throws its back into the process, for when national survival is at stake the morale of a country's man-power is central.

Prior to the outbreak of war, the general procedure of British peace-time rearmament was to inform the industries concerned by how much output was to be increased, but not how it was to be increased. The details were left to industry and labor to work out, and to bring this about small joint committees of employers and labor were set up by the government authorities in each field. The Minister for the Coördination of Defense was expected to keep in touch with these groups. With the outbreak of war, business men were moved into positions of authority, but labor leaders were left out. This proved the greatest industrial mobilization mistake of the first year of the war.

During the six-month period, September, 1939, to March, 1940, unemployment actually increased because of the dislocation of industry and the lack of thorough planning; an acute shortage of skilled labor crippled the armament program; the cost of living skyrocketed while wages rose much more slowly, causing widespread hardship and complaint; and, perhaps most serious of all, labor was suspicious rather than geared to inspired efforts. One obvious reason for labor's aloof attitude was doubtless the passive state of hostilities during these early months. Other causes were more inherent and significant, however, and grew out of the Government's failure to give labor its due representation in the higher councils of state and to understand the psychology of the workingman.

The general public, as well as labor, felt that the controls exercised by business men taken from their respective industries were basically wrong and that such men could not be expected to push through price and other restrictions until military events forced such action or until labor's suspicion had been allayed. This suspicion, growing out of non-representation of workers, was one of the principal reasons for labor's reluctance to accede to the new program. And yet it was apparent to all, labor included, that fundamental alterations must be made if the nation's economy were to become a match for that of the totalitarian powers.

An inventory of the labor pool revealed a shortage of skilled

draughtsmen and designers, particularly those of ingenuity and originality; that there was likewise a shortage of highly skilled mechanics, capable of adapting and repairing, as well as operating, intricate machinery; and that there was a dearth of production managers, shop foremen, and engineers trained in the technique and requirements of mass production. Candid analysis disclosed that for years the number of apprentices attached to the skilled occupations had been held down, and with the demand for war goods coming on top of the productive activity attending good times, this shortage of skilled operators was acute. One of its first results was the reëmployment of older people who formerly had been skilled operatives. It led, further, to negotiations between employers and trade unions for some relaxation of the strict rules controlling apprentices. The crisis also required the speeding-up of training programs in order that the semi-skilled might advance into skilled positions. During the period under examination, however, trade unions were generally loath to agree to the entry of a large number of new skilled workers until the urgency had been more clearly demonstrated. So it was with the recruitment of women workers. Organized labor demanded that a formula be determined in advance of dilution, and that in fixing that formula its leaders be given positions of influence and responsibility. Labor also protested against the conscription of its skilled workers, contending that they could play a more strategic rôle in industry than in the armed forces.

On top of these criticisms, caused by lack of careful planning and failure adequately to include labor leadership and its point of view, stood the uncontrolled and rapidly mounting cost of living. When the Prime Minister announced that wages could not be expected automatically to follow each advance in the cost of living, and that pre-war standards might have to be sacrificed if victory were to be achieved, labor made it clear that governmental fiat would not suffice. Ernest Bevin, General Secretary of the Transport and General Workers Union, replied that ninety per cent of Britain's labor was receiving wages which left no margin for any increase in the cost of living, and that to freeze such wages at existing levels would "result in an outbreak of labor troubles of a serious character." Labor therefore demanded a wider degree of price control and an equalization of sacrifice among all classes.

So long as labor leadership and the labor viewpoint were left

unrepresented at the top, the man at the lathe lacked confidence in the Government. An American observer summarized this situation as follows: In the beginning the Government tended to overlook the part that labor leaders would have to play in the new organization of industry. Trade union executives who expected to be consulted found themselves presented with a *fait accompli* or were actually ignored. As early as September 13, 1939, Arthur Greenwood warned that labor must be consulted. "It claims equality in the direction of policy and in the administration with employers and with the departments concerned."[1] This was a sharp warning, but it led merely to an announcement by the Prime Minister that the departments would be expected to coöperate with the trade unions and that joint committees would be set up in major industries. But this was not enough. Eight months after Britain entered the war, morale was still at low ebb.

Looking back on the first few months of the war, Sir Walter Citrine, General Secretary of the Trades Union Congress, said on January 6, 1940: "While the unions would not meekly acquiesce to attempts to reduce the standard of life of the workers or to curtail their democratic rights, labor has responsibilities as well as rights, especially during a life and death struggle with dictatorship." This showed that labor was willing to coöperate fully if met half way. But, as an American reporter stated two months later, "labor is still showing hesitancy, is waiting to be shown." The fundamental trouble, he continued, is the "public feeling that the Government has neglected the psychological aspects of the wage control question."

On May 10, 1940, eight months after the outbreak of hostilities, Winston Churchill succeeded Neville Chamberlain as prime minister. Immediately there was a change of attitude and policy toward labor. With this change, labor got solidly behind the war effort and industry began to hum.[2] The day after Churchill took office, Major Attlee was appointed Lord Privy Seal and prime minister's deputy in the House of Commons, while Arthur Greenwood was made

[1] Arthur Greenwood, *Why We Fight; Labour's Case* (London, 1940), p. 139.

[2] I do not deal with Labor's rôle in the House of Commons during the early months of the war. As W. Ivor Jennings has said, it was one of an "electoral truce," not a party truce. Furthermore, it was a period of unequal equilibrium, even in Parliament, where labor feeling was not so strong as in industry itself. See Jennings' article, "The Formation of Great Britain's Truly National Government," in this REVIEW, Aug., 1940, pp. 728–736.

minister without portfolio. Both immediately assumed positions in the Inner War Cabinet. This was May 11. Two days later, dynamic Ernest Bevin was selected as Minister of Labor and National Service and Herbert Morrison became Minister of Economic Warfare. The disequilibrium was rapidly being righted. That same day, the British Labor party announced its overwhelming support of the decision of its party leaders and endorsement of Labor's entry into the coalition government. "Smart Winston Churchill," observed an American weekly, "knew that his only chance to win the war lay in the enthusiastic support of the working classes."

Once the confidence of labor had been won, its governmental leaders were undeterred in promulgating stringent orders and regulations. To whip up munitions production, Laborite Bevin immediately established a Labor Supply Board of four employers and labor leaders with himself as chairman, outlawed strikes, made the referee's decision final and binding on both sides, substituted rest periods for vacations, took steps to prevent unwanted mobility of labor, and moved to peg wages. A month after he took over, Bevin proclaimed: "We are producing order out of chaos, and chaos it was when we went in." The facts supported his assertion, for in some plants production had been speeded up one hundred per cent in a fortnight.[3] Bevin, described as the "Joshua who will take over if and when better times come," came out militantly for socialism at the end of the war, and sooner if possible. "The British labor movement," said he at the Trades Union Congress in October, "came to the rescue of this nation and the Commonwealth at the blackest hour of its history. The reconstruction of the world must come about through harnessing the rising masses of Labor, to whom the future really belongs."[4] These ideas, which would have caused an extreme case of jitters during the Baldwin-Chamberlain era, sounded good to most Britons when Stukas were dive-bombing. "All skeins of diplomacy," asserted a *London Express* editorial, "all military feats, panics, rumors, sorties, and full assaults recede into their proper perspective behind the dominant figure of this war. This figure is the British workingman, his arms bared, his muscle flexed, and the sweat upon his brow."

Less than a month after entering the Churchill Government, Labor held three of the six positions (later increased to eight) in the innermost council of the British Empire; for Ernest Bevin was

[3] *Time*, June 17, 1940. [4] *Ibid.*, Oct. 21, 1940.

added and soon became "the apex of the pyramiding trade-union strength," while Herbert Morrison moved from the Ministry of Supply to the all-important post of Home Security, and party leader Attlee stayed on as Churchill's deputy. "Labor cannot be a prisoner in this administration," observed H. N. Brailsford, for the Labor leaders were given the chief charge of things and of men. On them fell the gigantic task of focussing the resources of an empire on self-survival. It is worth noting that Mr. Churchill has had the wit, Brailsford continued, to choose a miner, for the first time, to run the Ministry of Mines.[5] Indicative of the new spirit which prevailed was the fact that within a month after Churchill took over, Minister of Labor Bevin had recruited an additional force of almost a million men who at one time or another had had experience in the engineering industries, but who were not so engaged at the time when the inventory was taken. With Labor at the helm, dilution was not the spectre it had previously been.

One of the outstanding lessons of the first year of Britain's wartime economy is that a democracy can choose either to repress unions or to win the war, but it cannot do both at once. High morale and productive efficiency are the chief requirements for the national purpose, and they demand the willing coöperation—yea more, the spirited consecration—of the workers.

III

When a democracy goes to war, there is bound to be a lag in the adjusting of relationships between capital and labor. Without thinking much about it, business executives naturally appeal to patriotic necessity as a sure means of bringing labor unions into line. Labor, on the other hand, is not unconscious of its strategic rôle in a war economy or of the difficulties of recouping gains once sacrificed. Hence a conflict sets in, with public opinion as the prize and the final arbiter. It is a slow and costly process. To do away with it altogether would be to stifle the basic freedoms inherent in our system. To shorten and smooth over the process of adjustment is the task of greater understanding.

There is much truth in the frequent observation that labor difficulties are at root psychological. And yet there is the danger of over-simplifying the explanation and of slapping on the label "psychological" indiscriminately.

[5] *New Republic*, June 10, 1940.

The key word in the vocabulary of industrial peace is "confidence." Workers trust leaders who are their very own, who come up from the ranks and remain identified with them. They distrust people they do not understand and whose background and aspirations are different. For their own leaders, in whom they have confidence, they will make any sacrifice which the larger interest requires. For those in whom they do not have confidence they will not relinquish any part of their hard-earned gains, even if their trade union loyalties at times appear to conflict with their loyalties to country.

Working folk are usually simple folk. Hence they have confidence in men who are forthright and straight-dealing, and distrust those who scheme and equivocate. Their distaste of two-facedness is the more bitter when found in someone outside their ranks, but it is not spared even when those who previously enjoyed their confidence prove disappointing.

Labor did not have confidence in Mr. Chamberlain, for it considered him out of touch and out of tune, not only with world forces, but with the simple social things of which it knows so much. Mr. Bevin, on the other hand, represents everything it stands for—simplicity, forthrightness, sensitiveness to suffering, and aspiration. Mr. Churchill has many of the same characteristics, for he is blunt, hard-hitting, and hard-working.

Simple folk are greatly influenced by people, by their size-up of an individual, whether he be labor leader, capitalist, or king. Is he a real fellow? Can you trust him? Is he a hard worker? Does he have a fellow feeling? Workers admire the qualities of a man such as William Knudsen, business executive though he is; likewise, business men who have known him almost always admire John L. Lewis, because he has the same abilities as business' most successful leaders. The point is important: a common basis of understanding is the human one; straightforwardness and sympathetic understanding have a universal appeal. They are the basis of accord. When, therefore, organized business deals with organized labor or government deals with either or both, the spokesmen should be chosen with a view to their straightforwardness and the confidence they inspire. For confidence is the *sine qua non* in the path of progress and unity.

Nothing does more harm to capitalism than dishonest entrepreneurs, for they cause a loss of confidence. Workers do not inevitably envy or dislike the captains of industry; it is only when

these become too sleek and rich that people suspect that they may be too sharp or that the system may be wrong. When anyone in his conceit "loses touch," he inevitably sacrifices the confidence of the common man. And so it is in labor circles. The leader with the common touch is the one who wears.

A new order of labor leadership has developed in recent years, a type that inspires confidence in future accords. In the United States, it is most pronounced in the group of leaders who are at the second level of authority, the lieutenants in the labor movement. In the major labor organizations of this country are men who have the virility and native intelligence of the labor leaders of old, but over and above these basic considerations they have broad viewpoints and abilities to manage responsible concerns. In knowledge and sophistication they are a match for the most promising junior executives in the nation's business. The importance of this new crop is substantial, because it portends not only more skilled labor leadership but also greater mutual confidence on the part of labor and management.

Labor produces executive ability just as management produces it. And the examples of Bevin, Morrison, and other labor leaders administering the most important sectors of the national economy in Great Britain serve finally to scotch the impression that labor leaders somehow lack the talents and insights which make men capable of directing the complicated teamwork of their fellows.

After the organizing stage comes the administering period, during which the institution settles down for the long pull. For this, a different type of talent and temperament is needed than in the formative stage, characterized by struggle and rough-and-ready methods. The administrator relies rather upon planning, system, and teamwork.

Labor in this country is now passing from the organizing to the administering period. If and when collective bargaining is accepted understandingly by the main body of the nation's business leaders, organized labor will tend to lose its fighting characteristics. Realizing that it has arrived, it will willingly assume responsibilities toward the social order which it now looks upon with suspicion, seeing in them curbs to its liberty and influence. As the militant stage fades into the past, a new type of leadership will reflect the change in atmosphere and condition.

Business men who criticize some labor leaders for unreasonable-

ness and irresponsibility have much justice on their side. After a long period of fighting for recognition, it is inevitable that in some cases union leaders should be more troublesome than constructive. Most people strut a bit in the first flush of victory, but society can afford to be tolerant. If such behavior should continue, of course, to the extent of seriously impairing the nation's productive effort, public opinion would not be long in asserting itself. For the most part, however, organized labor does not wish to interfere with the unity of managerial direction—it merely wants representation, as the American colonists did of old. It wants to be consulted in those areas—wages, hours, conditions of work—where it has a right to be heard; it wants to advise and be instructed in order that everyone may perform his rôle more understandingly. Arrogance and irresponsibility are likely to crop out in all walks of life, and labor leaders are no exception. Give them the basic rights organized labor has long struggled for, however, and most of them will prove as constructive and responsible as the managers of business concerns.

In the shaping of social destiny, no factor is more important than the competence of those who lead. Competence, responsibility, and confidence are the links in a natural sequence. Can we produce leaders of industry and of labor who can inspire confidence on both sides? To the extent that we do, our domestic scene is likely to prosper. And to that extent, likewise, is labor likely to play a significant part in bringing the world back to a lasting peace.

IV

If the democracies win, what are the main outlines of the new social order which labor will recommend? It is impossible to deal with this question with blue-print finality because there are as many viewpoints and variations in labor union circles as in almost any other group.[6] Nevertheless, something can be learned by a glance at the politico-economic program of British labor, for it is more advanced than ours, and the British, at war, are more concerned than we Americans about winning the peace.

Labor contends that only production for maximum output can

[6] Cf. Arthur Greenwood, *op. cit.;* also Herbert Morrison, *Socialization and Transport* (London, 1933); *Britain's Industrial Future* (London: British Labour Party, 1928); Harold J. Laski, *Where Do We Go from Here; A Proclamation of British Democracy* (New York, 1940); Clement R. Attlee, *War Comes to Britain* (London, 1940); *Labour's Peace Aims* (London: British Labour Party, 1940); Sir Stafford Cripps, *Democracy Up to Date* (New York, 1940).

win the war and that this organization is socialist. "Put bluntly," says Arthur Greenwood, "the truth is that in these days only Socialist organization can meet dictatorship organization."[7] When democracy fights totalitarianism, he believes, there is needed an economic organization as definite in its purpose, as swift in decision, and more effective in operation than anything that dictatorship can produce.[8] Labor will bear any necessary sacrifices, but all segments of the population must share equally. Labor will restrict its liberties for the sake of survival, but it wants assurance that those it trusts will be at the helm.

After the war, labor makes it clear, there can be no return to former planlessness. Indeed, the structure of British industry already approximates socialist lines.[9] In 1919, four-fifths of the principal industries of the United Kingdom were under the control of syndicates and combines, and since then trustification has advanced even farther.[10] "Thus monopolistic power is wielded by the few. No self-respecting democracy can tolerate such a situation." Labor therefore advocates that the great industries—finance, land, transport, and coal and power—be transferred to public control, and in their management and products the workers demand a greater part. Effective coöperation between management and labor, it is believed, subject to a broad state plan, is essentially economic efficiency.

One of the encouraging aspects of analyses such as Greenwood's is the degree of insight into the practical and subtle aspects of management which they reveal. These leaders have learned that socialism will not prevail until it demonstrates its practical workability. Hence, Britain's labor leaders favor time-tested management methods and suspect visionary dreaming and bureaucratic bungling. It was a national labor government which first advocated the use of the corporation, that chief symbol of the business man, as an instrument for the socialization of certain industries. Since then a major part of the British economy (electricity, broadcasting, and transport notably) has been transferred to the device of the public corporation, a public-private form of organization with limited profit-making but freedom of management.[11]

[7] Arthur Greenwood, p. 191. [8] *Ibid.*, p. 191.
[9] *Ibid.*, p. 191 ff. [10] *Ibid.*, p. 200.
[11] See Marshall E. Dimock, *British Public Utilities and National Development* (London, 1933); Herbert Morrison, *Socialization and Transport* (London, 1933); Lincoln Gordon, *The Public Corporation in Great Britain* (London, 1938); John

Labor is keenly aware of the dangers of deadening uniformity and the imperishable value of initiative. Referring to the mistake that critics formerly made in confusing bureaucratic methods with socialism, Greenwood remarks that "what the Labour party desires least of all is officialdom and bumbledom." Reorganization of the economic structure along the lines of public ownership and control, he continues, should not be based upon any cut-and-dried formula, to be applied to all industries alike. The Labor movement is as concerned as anyone that the measures adopted shall be capable of achieving the end in view with a minimum of dislocation, and of functioning with a maximum of efficiency when in operation.[12]

Labor's plan of world order begins with the premise that the greatest contribution Britain can make to world good is on the basis of her own example. National goals are international goals. Labor desires social and economic justice for the common people, who must have larger opportunities. There must be flexibility and individuality, in nations and people. We must not, says Greenwood, "seek a 'tidy' world, goose-stepping its way to 'progress'."

Labor in the British Commonwealth, we are told, has no imperial aims, "will not lend itself to such aims." It will not degrade itself into a scramble for world markets. The issue is a moral one: the retention of spiritual values, of achievements which have increased human freedom, and the essential conditions of civilized life.

Labor believes that all the nations of the world should be invited to the peace conference, to discuss the whole range of human problems. Like liberty, peace is indivisible. War has destroyed freedom in the subjugated countries, and even in the democracies huge expenditures for armaments have reduced social services and postponed long overdue reforms. Resources have been dissipated. Thus, obviously, peace is a universal need and all should be invited to consider it.

Peace must assure for all time that no nation shall menace another by force of arms. Thus all nations must agree to stand together against any military attack made upon one of them. This can only be done, thinks Greenwood, through an international armed force to which all shall contribute.

Thurston, *Government Proprietary Corporations* (Cambridge, Mass., 1937); Terence O'Brien, *British Experiments in Public Ownership and Control* (London, 1937).

[12] Arthur Greenwood, *op. cit.*, p. 202.

Disarmament will be a major subject of discussion and must involve the transfer of power to take action against an aggressor to an international authority. This means a sacrifice of sovereignty by states, according to Greenwood, resulting in force ceasing to be an instrument of national policy and frontiers no longer determined by strategical considerations. State boundaries will be demarcated by racial, religious, cultural, and ancient historical associations.

A new league of nations must be established, wherein nations will coöperate to rule the major destinies of mankind on democratic lines.[13] It would control the internationalized police force, but would work to make that force unnecessary. Within this world-wide confederation of nations would be federal unions, "close and more intimate friendships which will help to cement the larger comradeship of mankind." The New World, the Balkans, the Scandinavian peoples are such groups. There may also be sub-federations, if necessary, for there is need for economic federation to widen the bounds of production and distribution.[14]

One of the most interesting features of British labor's international plan is its fundamental consistency with the program for England's domestic economy. At all times, that degree of government control requisite for stability and widespread well-being; as much freedom and individuality as possible within the larger framework; the predominance of spiritual values, liberty, and human worth. These are the ruling considerations dictating both plans.

And business men—will they be more afraid of these frankly announced plans than of defeat at the hands of the enemy? That hardly seems likely. British labor has been tested in the heat of battle, has become more practical as a consequence of running the affairs of state on several past occasions, has learned to appreciate the indispensability of managerial talent, and has recruited much of it into its own ranks, especially through the engineering unions. It is sober and responsible. British business executives have come to respect its leadership and acumen. It is all summed up in a word —confidence. It is quite likely, therefore, that if Great Britain survives the war there may be a transition to moderate socialism, in which no blood will be spilled and unity will be assured, because of the mutual confidence and respect which all elements of the population have in their respective leaders.

[13] Arthur Greenwood, *op. cit.*, p. 216.
[14] *Ibid.*, p. 217.

DEMOCRATIC PLANNING IN AGRICULTURE, I[1]

JOHN D. LEWIS
Oberlin College

I. BACKGROUND AND OBJECTIVES OF THE COUNTY LAND USE PLANNING PROGRAM

Planning has always been regarded as a matter for the experts. Laymen affected by the plans have usually participated in the process only by accepting or rejecting through their representatives planning projects drawn up by technicians. The necessary importance of the rôle of technicians and the inevitable conflict between technical considerations, which must determine the recommendations of the experts, and political considerations, which must determine the attitude of representatives, have led many to regard the whole idea of systematic planning (in any large field of production) as undemocratic in its general trend. The whole idea of planning, they insist, points necessarily toward bureaucratic centralization of responsibility. The significance of the recently launched County Land Use Planning program lies in the effort to achieve from the first stages of the process and at the most local levels of organization that fusion between the skill and experience of the expert and the political choices of laymen which is the essence of modern democracy. Decentralization and localization of planning is, of course, particularly essential in agriculture because of the need to adapt methods for attaining general objectives to widely varying sectional differences. At the same time, lay participation in agricultural planning can mean widespread participation because of the wide spread of individual responsibility for individual farm enterprises. It may well be, therefore, that the lessons to be learned from this experiment in democratic planning for agriculture are not readily transferable to other fields of productive enterprise. That is a question that I must leave to others.

On July 8, 1938, the Department of Agriculture and the Association of Land Grant Colleges and Universities approved the Mt. Weather Agreement as a joint statement of the general objectives of land use planning and the general procedures to be followed in

[1] This article is based primarily upon a study made during the period January, 1940, through May, 1940. The writer is greatly indebted to the Social Science Research Council, whose award of a post-doctoral fellowship for the academic year 1939–40 made the study possible.

such planning.[2] This Agreement promises to carry to a new level the record for inter-governmental coöperation already well established by the Department of Agriculture and the Land Grant Colleges, acting as agents of the states. It is already providing the student of government with one more practical experiment in that type of coöperative federalism in administration which has become increasingly important in recent years.[3]

The Mt. Weather Agreement may be interpreted, in the first place, as a necessary adjustment by the Department of Agriculture to the new responsibilities placed upon it by legislation since 1933.[4] The sudden expansion of direct administrative responsibilities assigned to enlarged or newly-created action agencies in the Department had produced an urgent necessity to correlate the work of each agency with that of other agencies—in the Department, in other departments, and in state governments—engaged in closely related work. "The problems of erosion, of tenancy, prices, farm income, flood control, submarginal lands, crop insurance, rehabilitation, all impinge on one another," said former Secretary Wallace. "Action programs cannot deal with one segment out of relation to the other parts of the whole program. Out on the watershed and on the farm, where our real job lies, we are dealing with a complex

[2] "Joint Statement by the Association of Land Grant Colleges and Universities and the United States Department of Agriculture on Building Agricultural Land Use Programs," July 8, 1938; reproduced in J. M. Gaus and L. O. Wolcott, *Public Administration and the Department of Agriculture* (Chicago, 1940), pp. 463–465, and discussed briefly on pp. 157–159.

[3] This point appears frequently in explanations of the County Land Use Planning program by members of the Department. See, *e.g.*, Bushrod W. Allin, "The County Planning Project—A Coöperative Approach to Agricultural Planning," address, Annual Meeting, American Farm Economic Association, Philadelphia, Dec. 28, 1939 (mimeo., U.S.D.A., B.A.E.). Carleton R. Ball gives a detailed description of various types of coöperative relationships in *Federal, State, and Local Administrative Relationships in Agriculture* (2 vols., Berkeley, 1938).

[4] The broad scope of this new legislation is indicated by a mere enumeration of the basic acts which had been added to existent agricultural legislation by 1938. New legislation included the Soil Conservation and Domestic Allotment Act of 1936, the Sugar Act of 1937, the Agricultural Adjustment Act of 1938, the Federal Crop Insurance Act of 1938, the Marketing Agreements Act of 1937, the Surplus Commodities Acts of 1937 and 1938, the Bankhead-Jones Farm Tenant Act of 1937, the Soil Conservation Act of 1935, the Flood Control Acts of 1936, 1937, and 1938, the Farm Forestry Act of 1937, the Pope-Jones Act of 1937 dealing with a water facilities program, and the Bankhead-Jones Act of 1938, which enlarged the program of agricultural research. U.S.D.A., "Memorandum for Chiefs of Bureaus and Offices," Oct. 6, 1938 (mimeo.); reproduced in Gaus and Wolcott, pp. 466–475.

of interrelated factors."[5] But, in spite of "the essential unity of the farm problem," conflicting efforts can develop readily when, for example, one agency is primarily responsible for a program of crop control to raise prices and another for a program of erosion control, or where in the same area one agency is working to reduce the danger of floods, another to resettle submarginal-land farmers on better land, and a third to protect and develop forest land. Hence, as the scope of Departmental controls and services was expanded, the problems involved in adapting national policies to local conditions in thousands of farm communities and the need for systematic coördination of efforts could not safely be ignored.

But such particularization and correlation might have been sought through various methods. The significant feature of the Mt. Weather Agreement was that it carried forward a remarkable experiment in *democratic* planning. The first part of the Agreement states:

> The Department feels the need for reasonably uniform procedures whereby farmers may take responsibility for the development of sound land-use programs and policies for the dual purpose of (a) correlating current action programs to achieve stability of farm income and farm resources, and (b) helping determine and guide the longer-time public efforts toward these ends.
>
> In order to function effectively and democratically in the national field, these procedures must provide for analysis, planning, and program-building beginning in the communities and extending then to county, state, and national levels.[6]

This emphasis is not new. Since the inauguration of the A.A.A. program, the Department has consistently attempted to base its more important action programs as much as possible on active farmer participation and farmer consent. Particularly since 1935, the Department has emphasized the importance of using the practical experience and local knowledge of farmers in both planning and administering agricultural programs.[7] The present planning

[5] *Ibid.*, p. 3; Gaus and Wolcott, p. 469.

[6] Elsewhere the general objective of the County Land Use Planning program is stated thus: "to provide for the fusion of farmer, technical, and administrative views throughout the process of program and policy creation, beginning with the local community. . . . Such plans and policies are designed to secure the coördination and correlation of public and group action at community, county, state, and national bases, and for the translation of appropriate conclusions on desirable agricultural adjustments into specific plans and programs for local, state, and departmental action agencies." U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 3.

[7] Cf. Dale Clark, "The Farmer as Co-Administrator," *Public Opinion Quarterly*, July, 1939.

program attempts through a novel type of machinery to bring farmers into more frequent and direct contact with agricultural specialists and administrators, and at the same time to bring the specialists into more frequent and direct contact with farmer experience and local practices, opinions, and traditions. As former Secretary Wallace has said, "farmers need the help that specialists can provide, and specialists must draw on the experience and judgment of farmers. The need therefore is to provide for integrating and unifying the planning of both groups as a guide to all public agricultural programs."[8]

II. MACHINERY AND PROCEDURE

On the basis of the Mt. Weather Agreement and subsequent agreements between the Department and the several State Extension Services, machinery for County Land Use Planning is set up as follows:[9]

(1) *At the county level*, a *County Land Use Planning Committee* is to be set up in each agricultural county in the country. These committees are being organized by the Extension Service of each state, with the County Agricultural Agent usually acting as secretary of the committee. It is suggested in the Agreement that each committee should consist of ten or more farm men and women and those state or federal officials in the county who are responsible for the administration of land use programs. Farmer membership is to constitute "a substantial majority" and a farmer is to be chairman of the committee. *Community committees* consisting of "representative farm men and women" are to be formed to assist the county committee.

[8] "Memorandum for Chiefs of Bureaus and Offices," Oct. 6, 1938, pp. 3–4; Gaus and Wolcott, p. 469. "If sound democratic policy is to be made, it must be initiated in local discussions participated in by leaders of farm, industrial, labor, and professional groups in their home towns. Where such discussion takes place, the give-and-take, the bargain, the compromise that is the characteristic mark of democracy is continually going on in local arguments, local conversations. The process of moderation is continually minimizing what appear to be irreconcilable differences in interest." M. L. Wilson, *Democracy Has Roots* (New York, 1939), p. 114. The interpretation of democracy in action which this provocative little book suggests is in general the interpretation on which the Land Use Planning program was based.

[9] This description is summarized from the following documents: the Mt. Weather Agreement; U.S.D.A., "County Land Use Planning Work Outline Number 1," Jan., 1939 (mimeo.); U.S.D.A., "Memorandum for Chiefs of Bureaus and Offices," Oct. 6, 1938; U.S.D.A., Form for a "Memorandum of Understanding between the Bureau of Agricultural Economics, U. S. Department of Agriculture, and [the Agricultural Extension Service and Experiment Station of a particular state]," Feb. 18, 1939 (mimeo.); U.S.D.A., "Memorandum of Understanding" between the Bureau of Agricultural Economics and "the Operating Agencies of the Department of Agriculture," March 11, 1939 (mimeo.); U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, pp. 1–5.

(2) *At the state level,* a *Project Leader* is appointed by the State Director of Extension to organize the planning project through the Extension staff. A *State Representative of the Bureau of Agricultural Economics* is designated to work with representatives of the Extension Service and the Experiment Station "in coördinating and stimulating planning activities among the several counties of the state." The Project Leader is administratively responsible to the Director of the Extension Service; the B.A.E. Representative is appointed only if he is acceptable to the Land Grant College, but is responsible to the B.A.E. The Project Leader, the B.A.E. Representative, and a representative of the State Experiment Station staff, designated by the Director of the Station, constitute a joint *Land Grant College-B.A.E. Committee,* which is responsible for developing the detailed procedure for the planning program and for encouraging related research work. Above this joint committee stands a *State Agricultural Land Use Program Committee* entrusted with general responsibility for the land use programs operating in the state. This state committee consists of "at least one representative farmer or farm woman from each major type-of-farming area in the State, the Director of the State Experiment Station, State Representatives of the B.A.E., the A.A.A., the S.C.S., the F.S.A., and such other State and Department officials as may have responsibility for the management of land use programs in the State." The Extension Director is chairman of the committee, and the B.A.E. Representative acts as secretary.

(3) *At the national level.* In a memorandum of October 6, 1938, former Secretary Wallace announced an important reorganization of the Department which was designed to facilitate the carrying out of the Department's responsibility in the Land Use Planning program. The *Bureau of Agricultural Economics* was designated as "a general agricultural program planning and economic research service for the Secretary and for the Department as a whole," and to it were transferred the planning staffs that had been attached to the action agencies in the Department. Within the Bureau, the new *Division of State and Local Planning* was given the tasks of formulating general procedures for carrying out the planning program and of reviewing and analyzing reports from local planning committees. This Division has a small administrative staff in Washington, and operates in the field through seven *Regional Representatives of the Bureau* and the State Representatives already noted above. To facilitate coöperation between the B.A.E. and the action agencies of the Department, an *Interbureau Coördinating Committee* was established. This committee is composed of representatives designated by the several action agencies to serve as liaison representatives between the respective agencies and the B.A.E., representatives of the Extension Service Office and the Solicitor's Office, the Land Use Coördinator, and the heads of the Divisions of the B.A.E. It meets under the chairmanship of the Chief of the B.A.E. The findings of this committee or of its subcommittees go to the Secretary by way of the *Agricultural Program Board* of the Department, a board composed of the heads of all Departmental agencies concerned with land use problems.[10]

[10] The heads of the following agencies are included: Office of Land Use Coördination, B.A.E., Extension Service, A.A.A., F.S.A., S.C.S., Forestry Service, Agricultural Marketing Service, F.C.A., R.E.A., and Commodity Credit Corporation. The Under Secretary, Assistant Secretary, First and Second Assistants to the Secretary,

That the work of the planning committees might be focussed on problems of national as well as local land use policies, and that reports from different sections might be comparable, the Department of Agriculture worked out planning procedures for county committees. The procedure developed for the first stage of planning has been designed to secure an analysis of the county sufficiently detailed to indicate the land resources of the county, the present utilization of these resources, the principal land use and human problems, and the sort of adjustments needed to deal with these problems. Although the emphasis of "Work Outline Number 1"[11] is upon the mapping and description of physical features of land areas and the problems of adapting land use to physical features, the attention of planning committees is directed also to the social institutions that serve the communities and the county and to such problems as those connected with tenancy or the relation of agriculture to other economic enterprises in the county. It is intended that this first phase of planning should lay the foundation for working out long-time plans, indicating both immediate and long-term land use adjustment goals for each local area. The county committee consolidates area maps drawn by community committees into a county map and organizes into a single report the descriptive material and any recommendations that may have come from the communities. From the county this report goes to the state committee, which may approve it or send it back to the county committee for corrections. After approval by the state committee, copies of the report are sent to the Department of Agriculture Extension Division and to the Division of State and Local Planning for analysis and suggestions regarding further local action.

Having completed an "intensive" report, the County Planning Committee is normally expected to move on to the "unified" phase of planning.[12] The object of planning at this stage is to trans-

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Director of Research, Solicitor, Director of Budget and Finance, and Director of Personnel are also members. Since the creation of the Program Board, the Secretary of Agriculture has almost invariably attended its meetings.

[11] U.S.D.A., "County Land Use Planning Work Outline Number 1."

[12] Three stages of planning work are designated. The first, "preparatory," is "designed to acquaint county agents and local planning committees with the scope and objectives of land use planning." The second stage, "intensive" planning work, involves the mapping and classification of land areas in the county and the formulation of long-time plans and immediate recommendations for land use. In the "unified" stage, efforts are made to translate plans into action. U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 4.

form recommendations for adjustment into a unified program of action. The program may take the form of integrated proposals for specific action on the part of agricultural action agencies, other public agencies, or individual operators. It may call for modification of national, state, or local policies to fit the discovered special needs of the county. In any case, the competence of the County Planning Committee is, of course, only advisory. Its specific recommendations must be implemented by the agreement of agricultural agencies, other public agencies, or individuals, to execute them. In counties where the program is operating successfully, therefore, much of the unified report will deal with specific commitments for action.[13]

The unified program report is also submitted to the State Land Use Planning Committee for approval. When approved by the state committee, it is forwarded through the Federal Division of Extension to the Chief of the B.A.E. for submission to the Interbureau Committee. The Inter-Bureau Committee, acting on the basis of a detailed analysis made by the Division of State and Local Planning, may refer suggested changes or amendments dealing with Department policy back to the state committee for reconsideration by the state and county committees. When agreement has been reached in the committees and the farmers of the county have given their general approval, the proposed program is presented through the Agricultural Program Board to the Secretary for his approval.[14]

[13] The following description of procedure in Teton county, Mont., gives a concrete illustration of the procedure at this stage:

"After the intensive county report containing these recommendations was finished in July, 1939, the county committee sent copies to the state land use planning committee, and to the federal and state agencies interested in land use programs in the county. Each agency was asked to look the report over, and to prepare a statement giving its opinion on the recommendations, and suggesting methods, if possible, by which it might carry out specific recommendations.

"Then the county committee, working closely with the representatives of the agencies of the Department of Agriculture, further analyzed the recommendations, and agreed on the general direction the changes should take. At the same time, the subcommittees on special problems, aided by technicians of the state college and the Department of Agriculture, were studying in detail the problems of the county and possible recommendations.

"The first unified agricultural program report for Teton county was prepared in January, 1940. It told of the aims of the planning committees, the problems they are trying to solve, and the proposed solutions. Special attention was given to the ways farmers and local, state, and federal agencies can work together toward these solutions." U.S.D.A., *Land Use Planning Under Way*, July, 1940, pp. 21–22.

[14] This procedure is described in U.S.D.A., "Memorandum for the Secretary *Re:*

Thus integration of county programs on the state level is to be achieved primarily through the continuous coöperation with county committees of the Project Leader and the State B.A.E. Representative, and the formal responsibility for an integrated state program rests with the state committee. The Division of State and Local Planning reviews and assists county planning and attempts to integrate the process on the national level. When action through a national office is called for, the Interbureau Coördinating Committee comes into operation as the link between the B.A.E. and the action agencies. The Agricultural Program Board, at the apex of the pyramid of committees, plays a less continuous rôle in the process and has a more formal, if more authoritative, review function.

By the beginning of 1940—twelve months after the Land Use Planning program was initiated—memoranda of understanding between the B.A.E. and State Agricultural Extension Services and Experiment Stations particularizing the principles of the Mt. Weather Agreement had been signed in forty-five states. These forty-five states, with the exception of Tennessee and Kentucky, had set up State Land Use Planning Committees. Although no agreement had been signed for Illinois, California, or Pennsylvania, Land Use Planning programs were under way in Illinois and California. A joint Land Grant College-B.A.E. Committee had also been established in each coöperating state. At the beginning of 1940, some type of Land Use Planning work was reported for 1,120 counties; "intensive" planning work had been carried on in 566 counties; and a "unified" program had been undertaken in at least one county in each of forty-one states.[15] The Division of State and Local Planning estimated that approximately 19,000 farmers were serving on county committees, and that nearly 51,000 farmers had served on 6,807 community committees in the course of the year.[16] These figures are probably too high to serve as an accurate indication of active participation, since serving on a committee

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Procedure for Developing a Unified County (or Area) Program," Feb. 2, 1939 U.S.D.A. (mimeo.).

[15] U.S.D.A., B.A.E., and Extension Service, "Report on the Progress of Land-Use Planning During 1939," Jan. 31, 1940 (mimeo.), pp. 7, 14. In all, 1,195 counties had been selected for planning during 1939–40, and of these 765 had been designated as "intensive" planning counties. *Ibid.*, p. 12.

[16] *Ibid.*, p. 7; U.S.D.A., *Land Use Planning Under Way*, p. 10.

could mean in some cases simply designation to serve or attendance at a single meeting.

A year of encouraging progress on a trial and error basis has revealed a number of problems that should be of interest to political scientists as well as to agriculturalists and economists. The balance of this paper deals with four of the major organizational problems connected with the planning program.[17]

III. THE PROBLEM OF AREAS

From the beginning, the county was assumed to be the proper basic local unit for Land Use Planning, just as it had been assumed to be the proper local unit for A.A.A. administration and for the A.A.A. planning committees set up in 1935. For this choice there seems to be ample justification. Outside New England, the county has been the focus of rural political life for many generations, and consequently not only has acquired a system of institutions such as its officers, its court-house, its county fair, and its bonded debt, but also has become a comprehensible entity readily accepted and perhaps even loyally supported by a local patriotism. Tradition has made the county the natural local unit for the purpose. But aside from this, the fact that state extension work has been organized for years on a county basis would probably have been decisive. The county agricultural agents have always been *county* agents, and it is upon them that much of the obligation for Land Use Planning assumed by the Extension Services must fall.

But the question that was not answered so easily was that of the proper basis for subdividing the county. There seems to be general agreement among those responsible for the Land Use Planning program that the way to get genuine farmer participation is by beginning the work through local community meetings,[18] and this view seems to be borne out by the fact that in a number of counties in which the most outstanding work has been done organization was begun on a community basis and the work carried on with active and continuous community participation. "Work Outline

[17] Most of the factual material reported here was collected during the first five months of 1940.

[18] The Mt. Weather Agreement speaks of "community and neighborhood planning committees" which should "form the cornerstone of the whole planning organization," and in the first work outline prepared in the Department as a guide to county committees there is further emphasis upon the importance of having preliminary mapping and classification done on a community basis.

Number 1" suggests that existent community boundaries might be used, such as those of minor civil divisions, or those established for extension work, for A.A.A., for a drainage district, etc. One result of the effort to find workable units for community participation in the program has been to reveal once more well-known organizational weaknesses at the primary level of rural local government. Frequently local political units are found to be too large, too small, or without significance as real centers of community activities.

Where the town or township remains an important political unit, town or township boundaries are usually taken as community boundaries. This is true, of course, in the New England states and in the tier of mid-western and northwestern states where the transplanted township took root and survived. But there are sections, notably in the South, where minor civil districts have none of the importance traditionally attributed to the New England town and the mid-western township. In addition, the size of the units frequently discourages any attempt to develop a new community consciousness as part of the planning process. In Mississippi, for example, the supervisors' beats, always five in number whatever the size of the county, are often found to be too large for effective community organization. On the other hand, supervisors' beats in Alabama and militia districts in Georgia seem far too numerous to serve as community units. Of course, the maximum size of a workable community varies greatly with different sections of the country. The fact that a meeting is held ten miles away may be sufficient to discourage the attendance of a not too prosperous cotton tenant, while the same distance may appear trivial to a farmer of the western range. The B.A.E. Representative of Montana reports that in one county, served by a single community center, people regularly travel from fifty to seventy miles to meetings.

Where effective local units do not exist, successful administration of the Land Use Planning program seems to require that substitute units be created—or, more accurately, discovered. This suggests that the present tendency toward the dissolution or absorption of local rural units of government may have some disadvantages which are not generally recognized. Where substitute units have been used during the first year of planning organization, there has been a tendency to try to trace community boundaries on the basis of geographic divisions or of type-of-farming areas. But too often it appears that the boundaries of existent but legally unacknowl-

edged communities do not correspond with the boundaries that are determined "naturally" by geography or types of farming. A good county agent has usually discovered this for his own county, and before he has worked long in the county has discovered where the accepted meeting centers are and how far the attraction of such centers extends. Extension Service districts, communities, or meeting centers are, then, one substitute for the more formal township community structure. The unit in such cases is a rough and ready sort of sociological community. But such units are not always an adequate basis for a program of democratic planning, because they do not always reach into all corners of the county and bring all groups into participation. This consideration has led to a recent interest in the scientific determination of sociological neighborhood and community areas. In one state (Virginia), the Extension Service has, with the assistance of a sociologist, been setting up Extension Advisory Committees on a sociological community basis. The work of delineating such communities has been under way for ten years, and about one third of the counties of the state are now organized on a community basis. But such painstaking and systematic delineation of communities has been exceptional in the past. Recently, the B.A.E. Division of Farm Population and Rural Welfare has conducted sociological surveys of about one hundred scattered counties, for the purpose of mapping existent communities and neighborhoods on the basis of such factors as trading-centers, roads, schools, churches, nationality groupings, etc.[19]

It would obviously be impossible to make a very extensive survey in each of some three thousand counties, but the Division of Farm Population and Rural Welfare believes that its methods and techniques have now been simplified to the point where one person can lay out the neighborhood and community areas as a basis for planning organization in a county in a week or ten days. Because of its simplified procedure, it is also possible for the Division of Farm Population and Rural Welfare to train people without specialized

[19] The distribution of completed community surveys in December, 1940, was as follows: Virginia, about 25 counties; Arkansas, 17 counties; North Carolina, South Carolina, Alabama, about 15 counties each; Maryland, Tennessee, Florida, Mississippi, Oklahoma, New Mexico, Kansas, Illinois, Nebraska, South Dakota, North Dakota, Colorado, from 1 to 3 counties each. These figures are taken from a memorandum prepared by Dr. Douglas Ensminger, of the Division of Farm Population and Rural Welfare, and released to the writer by Dr. Frank Cronin, acting head of the Division (Dec. 31, 1940).

sociological training for this work, and the work is, in fact, now being carried on by personnel of the Division of State and Local Planning trained by sociologists from the Division of Farm Population and Rural Welfare. Planning leaders in a number of southern states, particularly North Carolina and Maryland, are convinced that such a survey should be made in each county before organization of that county is begun. In general, the interest in this procedure has been confined thus far to the southern states, but there would seem to be no reason why the procedure should not be useful in those western states where townships are either non-existent or unimportant as community units.[20]

In some counties, one important result of sociological community surveys has been to mark out more clearly areas in which the farm population does not ordinarily enjoy the privilege of direct representation in county representative bodies—areas which do not, therefore, ordinarily participate in managing the affairs of the county. In numerous states there is some attempt to make Land Use Planning more democratic than the prevailing tradition sanctions by drawing such groups into some degree of participation in Land Use Planning. To many planning organizers, honestly interested in making Land Use Planning organization democratic, this is the principal advantage of sociological community and neighborhood surveys.

But for the student of government this attempt to create new units for democratic discussion and policy planning has broader significance. In the past, innumerable government units, such as park boards, drainage districts, etc., have been established on the basis of the area affected by a particular problem or function. And in recent years a great deal of effort has gone into the elaboration of projects for consolidating local government units for the sake of more efficient administration. The thinking of professional planners in America has pointed in the same direction. Looking steadily at specific problems and the proposals suggested by technicians for their solution, they have tended to concentrate upon the enlargement of the areas for which the planning is to be done. But the County Land Use Planning program involves an attempt to find

[20] Dr. Ensminger believes that planning work would be facilitated, even in the northeastern and mid-western states, if the basis of organization were the social community instead of the town or township, since community boundaries do not always correspond to the boundaries of a town or township.

small town-meeting units which can be delimited, not in terms of a particular function, but in terms of the natural social cohesion of the citizen group included and its ability to work effectively as a unit. It is an attempt to elevate social units, which may be unconscious or only half-conscious of their own unity, into active semi-political units with a broad general advisory competence. While most local government reformers have looked toward administrative efficiency as their goal, and while most planners have looked at areas in terms of specific planning problems, land use planners engaged in this program have looked first at the problem of democratic participation in planning, and consequently have had to discover local communities within the county where none seemed to exist.[21] To the extent that County Land Use Planning leads to practical results and thus becomes more thoroughly institutionalized, the program may well work toward the revitalizing of local rural responsibility, whether that responsibility be centered in a township or in some less traditional unit.

IV. SELECTION OF COUNTY AND COMMUNITY COMMITTEES

"Land use planning is a broadening of democracy in agriculture to make possible wider group action on farm problems," says a B.A.E.-Extension Service pamphlet.[22] "To make this effective, the views of farmers in each area must be presented by committees that actually represent farmers in the area." This pamphlet concludes: "The most democratic method possible is proving best for the selection of members on land use planning committees, and in every case it is expected that eventually all committees will be chosen by elective methods."[23] Thus the Washington offices principally responsible for the federal administration of the planning program appear to be agreed that democracy in planning must mean the active participation of the farmers through their freely elected representatives.

But out in the field one meets a bewildering variety of interpretations of democracy. And it must be admitted that, although field

[21] See the discussion of wider participation in urban planning by H. S. Buttenheim, "Planning Needs the Man in the Street," *National Municipal Review*, Vol. 28 (1939), 832 ff.

[22] U.S.D.A., B.A.E. and Extension Service, *County Planning Series*, No. 2, *Membership of Land Use Planning Committees* (April, 1940), p. 1.

[23] *Ibid.*, p. 7. Cf. also U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 5.

representatives have tried to have the Department's interpretation of democratic organization translated into action, practice still lags behind theory. A study of organization in twenty-two states and about fifty counties in those states produced the following picture.[24] Election of committee members was the regular practice in five states.[25] Appointment was the regular practice in the others. Where appointment prevailed, the committees were usually selected, in fact if not in form, by the county agent, although he frequently shared the responsibility with the group of agricultural agency representatives in the county, with an Extension Advisory Board, or with the Farm Bureau Board. Of the seventeen states using appointed committees, four had experimented with election in some counties, and at least four regarded appointment as a temporary procedure and hoped to shift soon to election.

Where committees have been elected, the procedure has of necessity been simple and informal. In practically all cases, the elections have been held in open meetings, without written ballots or any of the other ordinary paraphernalia of elections. The procedure developed in North Dakota is one that has secured wide participation of farm people and that seems to have worked well in other respects. As illustrated by Ward county, it operated as follows. The program was explained to a group of about forty which included the members of an earlier A.A.A.-Extension Service planning committee and additional farmers selected by the county agent. This group, having agreed unanimously that the program should be adopted in Ward county, circulated information about it in the county and approved the division of the county into twelve community units. These communities were formed by grouping the fifty-seven townships of the county on the basis of types of land, topography, local trading and meeting centers, and the accessibility of meeting places. The farmers of each community were then invited by mail and radio to open community meetings. At these meetings the program was explained once more, and community committees of seven or eight members were elected. So far as the size of the committee permitted, each township in the community

[24] The states studied were Maryland, Virginia, North Carolina, Georgia, Alabama, Mississippi, Tennessee, Texas, New York, West Virginia, Ohio, Illinois, Wisconsin, Minnesota, North Dakota, Montana, Nebraska, Iowa, Kansas, Missouri, New Hampshire, Maine. Of these, the writer visited all but three for personal interviews with B.A.E. and Extension Service workers engaged in organizing the program.

[25] Texas, West Virginia, North Dakota, Montana, Kansas.

was represented on the community committee. Each community committee then selected its chairman and secretary, and the twelve community chairmen became members of a county committee, which included in addition some members of the former Program Planning Committee and representatives of the agricultural agencies operating in the county. The work of classifying and describing land areas and drawing up recommendations for land use was done by the community committees in a series of five or six meetings each, the county agent or an assistant county agent serving as secretary and consultant at these meetings. After the county committee had considered the findings of the community committees, they were taken back to the farm people for further discussion at a series of open community meetings before the first report was written. Over a thousand farm people participated to some degree in the first step of the planning process, and the county agent estimates that about one-third of the farmers in the county had some knowledge of the program.

A similar procedure is used in the neighboring state of Montana and in West Virginia. The B.A.E. Representative in Montana reports that attendance at open community meetings runs from twenty to sixty per cent of the farm operators. Roosevelt county, Montana, looking ahead to a permanent system of planning committees, has established three-year staggered terms of office for committeemen. Young and Kaufmann counties in Texas report election procedures similar to those used in North Dakota and Montana, and in these counties also large attendance is reported for open meetings.

Maryland is experimenting with a system of restricted elections. In Washington county, a county committee which had been appointed by the county agent in consultation with agency representatives nominated ten farm people for each of seven communities. Mail ballots were then sent to the farm people of the communities with instructions to vote for three men and two women. With each ballot was mailed a one-page explanation of the Land Use Planning program. Returns from various communities ran from twenty-five to forty per cent. The five elected from each community then served with two or more members of the county committee as a community committee, bringing the total membership of community committees up to from seven to ten. In some communities the whole committee, in others the chairman and secretary, were

then designated to represent the community on the county committee. The B.A.E. office in Maryland is now interested in developing a regular procedure through which the community would nominate as well as elect, and which would provide a specified term, perhaps two years, for community committeemen.

It is hard to find adequate general explanations for the particular distribution of the states that have adopted an elective system. North Dakota and Montana are northwestern states where, we are told, a spirit of frontier democracy and equalitarianism is still alive. But Wisconsin and Minnesota are also northwestern states with strong traditions of direct democracy, and the nationality background of their populations is similar to that of North Dakota; but in these states committees have usually been appointed. In West Virginia and North Dakota, well-supported farm organizations have given farmers experience in organized group action, but the same thing is true in mid-western states that have not used elections. In most cases, the explanation of the choice would seem to lie not so much in the background of the particular state as in the attitude of the planning leaders in that state—particularly Extension Service leaders, who are not subject to control by the Department of Agriculture and are often somewhat suspicious of its suggestions.

The pressure to "get things done" has tended to encourage appointment rather than election. The Division in Washington naturally expects its field agents to report results that will justify the high hope with which the program was launched, and the state office in turn pushes the county agents for progress reports with which to appease Washington administrators. Democratic procedure is notoriously slow procedure. Consequently the first thought of an overworked county agent, unless he is genuinely impressed by the importance of finding a truly democratic committee, will be to find a group of industrious and coöperative farmers who can be depended upon to work together harmoniously. With the best of intentions and with no thought of deliberately stacking the committee, he may set up a committee of "outstanding leaders" who have a sincere desire to act in the interest of the whole county, but who have only a second-hand knowledge and indirect concern about the problems of less successful farmers in the county. It is the writer's opinion that the program was pushed too vigorously from Washington during the first eighteen months of its operation.

The program was not an emergency program, but, it is hoped, a long-time program of permanent importance. In numerous cases, sounder county organization might have resulted from slower procedure and more effort to educate both the county agent and the farmers of the county in the purposes of the program.

In many cases, state and county organizers have begun with an appointed committee, on the principle that it is difficult, if not impossible, to arouse general interest in the program until the program is already under way and some prospect of concrete achievement comes into view. Elections held before such general interest has been aroused, they say, cannot be expected to result in genuinely representative committees. Even though the principle of elected committees be accepted, this may be an adequate reason for postponing elections in certain instances.

A number of common arguments for appointment rather than election seem to indicate an inadequate understanding of the basic objectives of County Land Use Planning as understood in Washington. Hard-working organizers out in the field sometimes explain that a planning committee must be made up of the good or intelligent leaders of the community or county. Such people, they say, can be carefully selected and appointed, but an election meeting cannot be trusted with the difficult job of finding them. It will restrict its choice to those who happen to attend the meeting. It will pass by a modest and competent man and elect a loudspeaker or a "politician." Such an argument would seem to pass over too readily the question of what a "good" representative should be good for, but it is none the less one of the strongest arguments for appointment.

Perhaps the most common reason for distrust of elections is the belief that appointment is more likely than election to secure committeemen whose views will be "objective" and not colored by personal interests. This belief goes naturally with the conviction that there can be found one program for the common welfare of the county that is ideally best for the county, and that it is the job of the county committee to discover this program. This type of thinking tends to ignore or conceal the facts that in any community as large as a county partially conflicting interests are bound to exist; that any program looking toward the common interest of the county must be built by discussion and compromise out of the conflicts of particular interests; and that the essence of planning is that

it is a *continuous* process, not a striving after the one permanent scheme.

But where the interests of different groups in a community are irreconcilable, democratic procedure would seem to be automatically excluded. In the greater part of nine or ten southern states, the determination to maintain white supremacy is obviously irreconcilable with any immediate realization of equal economic and political rights and opportunities for the Negro population. In the same areas, the aspirations of the poorest groups of farm workers, black or white, seem to be irreconcilable with the determination to maintain a traditional plantation system of production.[26] No realistic person will be surprised at the absence of elective committees in the southern states; more surprising is the fact that in a number of these states there has been some interest in and experimentation with elections.

"During 1939–40 . . . emphasis will be placed upon obtaining wider and truly democratic farmer participation [in county planning]."[27] Members of the field force, as well as members of the Washington office, are beginning to see clearly the necessary rôle of democratic elections in this sort of planning. This was indicated by frequent explanations that present methods of selection by appointment are temporary. For reasons suggested above, it may be difficult, if not impossible in some sections, to push democratic representation very far at present by the mere introduction of the machinery of elections. But the general tendency is certainly toward elections.

[*To be concluded in the next issue*]

[26] E.g., in Lee county, Ala., 65 per cent of the farmers are Negroes, 72 per cent are tenants, 53 per cent of the tenants are sharecroppers. There are, of course, no Negroes on the county committee; there are no croppers; there are "a few" tenants. Seventy-five per cent of land leases are merely verbal agreements, usually for one year. The committee's report contains very little on tenancy problems and no recommendations concerning leases. In Greene county, Ga., 52.5 per cent of the population are Negroes; 27.6 per cent of the farm operators are sharecroppers, and 73.7 per cent are tenants (including croppers). There are, of course, no Negroes on the county committee; there are no croppers; there are tenants who operate large units. The committee was of the opinion that about 20 per cent of the white tenants and 10 per cent of the colored were capable at present of operating farms as owners. The report did not explain the basis of these estimates. On the general background, cf. C. S. Johnson, E. R. Embree, and W. W. Alexander, *The Collapse of Cotton Tenancy* (Univ. of No. Carolina Press, 1935).

[27] U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 5.

CONSTITUTIONAL LAW IN 1939–1940

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1939

ROBERT E. CUSHMAN

Cornell University

During the 1939 term, President Roosevelt made his fifth appointment to the Supreme Court. Mr. Justice Butler died on November 16, 1939. Attorney-General Frank Murphy was appointed to this vacancy and took his seat on February 5, 1940. Presidents Lincoln and Taft also appointed five members of the Court; only President Washington and President Jackson appointed more than five. By his policy of choosing younger men, President Roosevelt reduced the average age of the members of the Court from seventy-two to sixty-one in less than three years. This change is important because it brings to the work of the Court younger and more vigorous men; it is also important because it extends the President's influence, through his appointment of justices, over a much longer period of time. It seems probable that we shall have a "Roosevelt Court" for many years to come.

A. QUESTIONS OF NATIONAL POWER

I. LEGISLATIVE POWER

1. COMMERCE POWER

The Supreme Court invalidated the Guffey Act in 1936 in the Carter case[1] on the ground of the unconstitutionality of the labor provisions of the statute as well as its delegation of legislative power. Without passing upon the validity of the price-fixing provisions of the act, the Court held them to be inseparable from the labor provisions and declared the entire statute void. The Court said: "The conclusion is unavoidable that the price-fixing provisions of the code are so related to and dependent upon the labor provisions as conditions, considerations, or compensations, as to make it clearly probable that the latter being held bad, the former would not have been passed."

Congress promptly repudiated this judicial interpretation of congressional intent by passing in 1937 a new Bituminous Coal Act which provided for price-fixing and the regulation of competition, but omitted the objectionable labor provisions. The new act was held valid in Sunshine Anthracite Coal Co. v. Adkins.[2] The provisions of the new statute were closely similar to those of the old. The purpose was to stabilize the coal in-

[1] Carter v. Carter Coal Company, 298 U.S. 238, 1936. See this REVIEW, Vol. 31, p. 259.

[2] 310 U.S. 381, 1940.

dustry through price-fixing and the elimination of unfair competition. Regulation to this end was placed in the hands of the National Bituminous Coal Commission. Producers of bituminous coal were organized as members of a coal code, which provided for the establishment of minimum and maximum prices and for rules governing competitive practices. A tax of one cent per ton was placed on all sales of bituminous coal products. A tax of 19½ per cent was imposed upon the sale price of coal produced by those who are not members of the code. The commission was authorized to determine, under standards provided in the act, whether or not coal is bituminous. The Sunshine Anthracite Coal Company disputed the finding that it was producing bituminous coal, refused to join the code, and refused to pay the 19½ per cent tax. It denied the applicability of the statute to itself, and the constitutionality of it, if applicable.

The Court held that the statute did apply to the company and that it was valid. An opinion by Mr. Justice Douglas covered the following points: First, the commission's finding that the company produced bituminous coal is supported by substantial evidence and is therefore conclusive. Not having joined the code, the company is therefore liable to the 19½ per cent tax. Second, this tax is not a revenue measure, but a penalty; but this does not make it unconstitutional, since it is a device to aid Congress in its regulation of interstate commerce. The purpose and effect of the act is to regulate interstate commerce by placing under federal authority prices and business practices in the coal industry which affect that commerce. Third, Congress may, in its discretion, single out particular industries and remove them from the normal application of penalties under the Sherman Act. Fourth, the act does not invalidly delegate legislative power. The sub-legislative authority given to the commission is broad, but it is limited by accompanying legislative standards, which sufficiently control its discretion. No authority is delegated to private persons, since the code authorities all act under the jurisdiction of the commission. Fifth, the fixing of coal prices by Congress does not violate the due process clause of the Fifth Amendment any more than price-fixing by state authority violates the Fourteenth Amendment. This point was disposed of in Nebbia v. New York.[3] Sixth, the classification of coal producers into code and non-code groups does not violate the Fifth Amendment. The Fifth Amendment contains no equal protection clause. In exercising its commerce power Congress may therefore properly use discrimination as a method. Discrimination as embodied in the statute "constitutionally may be the price of non-compliance." There has long been controversy as to whether due process of law in the Fifth Amendment includes protection against the denial of the equal protection of the laws. The Court here holds that it does not. Mr. Justice McReynolds dissented, but wrote no opinion.

[3] 291 U.S. 502, 1934. See this REVIEW, Vol. 29, p. 45.

The Interstate Commerce Commission has statutory authority to supervise and effect consolidations of railroads. Such consolidations must "promote the public interest." The commission authorized a lease of the Chicago, Rock Island, and Gulf Railroad Company to the Chicago, Rock Island, and Pacific Railway Company. This arrangement eliminated an office and resulted in substantial saving. As a condition of the consolidation, the commission required that certain employees be compensated over a period of five years for losses which they would incur. These losses, comprising pay reductions, loss of employment, and necessary removals to other places, would have amounted during the five-year period to $290,000. The savings due to the consolidation would be $500,000 for the same period. In United States v. Lowden,[4] the question is raised whether the commission, as a condition of permitting one railroad to lease another, may require that resulting losses to employees be minimized. Speaking through Mr. Justice Stone, the Court upheld the commission's power. The opinion readily admits that the "public interest," which railroad consolidations must serve, is not a vague and general public interest synonymous with national social welfare, but a specific public interest in the maintenance of an "adequate rail transportation system." Reasonable safeguarding of the interests of employees, dislocated through a railroad consolidation, is closely enough related to the maintenance of an efficient transportation system to bring it within this concept of public interest. This is shown by many federal statutes which protect the interests of railway employees and by decisions holding these statutes to be within the commerce power. In holding void the first Railroad Retirement Act in 1935,[5] the majority of the Court had declared in a dictum that the purpose of the statute to provide economic security for railway workers was irrelevant to the power of Congress to regulate commerce. Mr. Justice Stone here observes that, in spite of this dictum, it is impossible for the Court to say that Congress had no rational basis for its judgment that the interests of railway workers here involved had a relation to the "public interest" as defined in the statute. There is no denial of due process of law in requiring a railroad which is being allowed to effect a substantial saving to divert part of that saving to make good the losses of its employees.

Sections of the Interstate Commerce Act require common carriers of petroleum to give to the Interstate Commerce Commission certain information for use in valuing their properties. The act defines common carrier in this connection as "all pipe-line companies . . . engaged . . . as common carriers for hire." The Valvoline Oil Company operates two refineries in Pennsylvania. It purchases oil at the wells in Pennsylvania, West Vir-

[4] 308 U.S. 225, 1939.

[5] Railroad Retirement Board v. Alton R. Co., 295 U.S. 330, 1935. See this REVIEW, Vol. 30, p. 62.

ginia, and Ohio. This it transports through its own pipe lines to the refineries. It refused to supply the information required by law on the ground that it was not a common carrier and that the requirement took its property without due process of law. In Valvoline Oil Company v. United States,[6] the Court, speaking through Mr. Justice Reed, rejected both of these contentions. The company is a common carrier within the terms of the act, since it purchases oil from many sources and transports it. Its position is wholly different from that of an oil company which pumps oil from its own wells to its own refineries. The due process argument assumes that the information secured from the company will be used as a basis for regulation believed to be invalid. But this contingency may never arise, and therefore the company has suffered no damage.

2. POWER TO DISPOSE OF FEDERAL PROPERTY

The extent of the power of Congress to place conditions upon the disposal of federal property was involved in United States v. San Francisco.[7] In 1913, Congress granted to the city and county of San Francisco certain lands and rights of way in the public domain in Yosemite National Park and Stanislaus National Park. The grants were made to enable the city to provide itself with water and to establish an electricity supply system. The grants prohibited the city from selling or leasing to any private corporation or individual the right to sell or sub-let the water or power derived under the terms of the grant. The city, however, granted to the Pacific Gas and Electric Company, a private utility, the right to distribute and sell to consumers electric current produced under the grant. The government sought to enjoin the city from continuing this franchise to the company, on the ground that it violates the terms of the original grant. In an opinion by Mr. Justice Black, the government's position is upheld. The purpose of the condition attached to the original grant to the city was to make sure that electric current obtained thereunder should be sold by the city directly to consumers without private profit. Mr. Justice Black quotes at length from the congressional debates to establish this original congressional purpose. The city's franchise to a private company clearly violates the statutory condition. The conditions thus imposed do not attempt to regulate the internal affairs of the state and municipality, and thus do not go beyond the power of Congress. The Constitution explicitly gives Congress the power "to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States." In exercising this power, Congress may validly impose conditions "to avoid monopoly and to bring about a widespread distribution of benefits. The statutory requirement that . . . power be publicly distributed does not represent an exercise of a general control over public

[6] 308 U.S. 141, 1939. [7] 310 U.S. 16, 1940.

policy in a state, but instead only an exercise of the complete power which Congress has over particular public property intrusted to it." The city may not continue to avail itself of the rights granted by the government and at the same time persist in violating the conditions upon which they were granted.

3. STATUS OF FEDERAL CEDED DISTRICTS

In James Stewart & Company v. Sadrakula,[8] the Court re-examined some of the major problems relating to the status of federal ceded districts within the states. These properties have been dubbed "federal islands," since the Constitution provides that federal jurisdiction over them is exclusive. In the present case, the company was a subcontractor engaged in building the New York Post Office. The New York labor law requires certain protection to workmen in the form of flooring and scaffolding in such a construction as the plaintiff was engaged in. The company did not comply with the New York statute, and as a result of its failure to do so a workman was killed and his administratrix brought action for damages. The New York Post Office site was acquired by the federal government by an act of cession of the New York legislature. Does the exclusive jurisdiction of the federal government over this site bar the application therein of the New York labor law? The Court, speaking through Mr. Justice Reed, held the New York statute validly applicable. He says: "The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary, its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred. This assures that no area, however small, will be left without a developed legal system for private rights." The policy of making the laws of the states in which these ceded districts are located operative within such districts has been followed by Congress from an early date. This has been consistently done with the criminal laws. Even without specific statutory action, some state laws have always remained applicable in these districts, but of course, these laws must not interfere with the national purposes for which the government acquired the district. No such interference results from the application of the state labor law. It may increase slightly the cost of construction, but this does not constitute a burden upon the government. The contractor himself enjoys no governmental immunity arising from his business relations with the government. The state law remains applicable until abrogated or modified by Congress. Subsequent changes in the state law, however, would not be effective within the district without congressional sanction.

[8] 309 U.S. 94, 1940.

4. EMINENT DOMAIN

The case of United States v. Sponenbarger[9] raised questions regarding the taking by the government of private lands by operation of the Mississippi Flood Control Act of 1928. This act establishes a system of flood control, but does not attempt the equal and complete protection of all lands in the flood area. The scheme is based on a levee system which constricts the water of the Mississippi to a moderate degree, but in periods of extreme floods allows some of the water to escape over certain lower levees known as fuse-plugs. In short, some lands are designated as floodways and subjected to moderate flooding in times of high water in order to avoid destructive damage to the entire area. The respondent's land lay in the path of one of these proposed floodways, although the floodway appears never to have been constructed. This particular land was not as fully protected from floods as that in neighboring areas. It was, however, better protected than it had been before any government construction was undertaken. Was the respondent's property taken without compensation within the meaning of the Fifth Amendment, and did he have a right of recovery under the act? The Court, in an opinion by Mr. Justice Black, answered both questions in the negative. The government's program of construction did not directly injure the land. The government is not liable because some land is easily protected from floods, while other land cannot be fully protected. There was no taking by the government. Assuming that this land is still liable to danger in high water, the additional protection, even though not fully adequate, more than offsets any possible injury which the respondent will suffer. The net result has been a gain for this landowner, and he accordingly has no claim on the government.

II. JUDICIAL POWERS

1. EFFECT OF AN UNCONSTITUTIONAL STATUTE

The question of just what is the precise legal effect of a decision holding a statute unconstitutional is not simple. Few courts have had the necessary combination of courage and bad judgment to apply rigidly the old orthodox theory of unconstitutionality. This was stated years ago in Norton v. Shelby County,[10] in which Mr. Justice Field declared that an unconstitutional statute was not law and never had been law; it conferred no rights, no duties, no liabilities. No legal consequences, in short, could be built upon it. The court's decision does not change a valid statute into a void one; the statute has always been void. This theory of unconstitutionality is wholly logical, but it results in so much injustice and overlooks so many practical realities that modern courts have applied it only with substantial qualifications. This is what the Supreme Court does in Chicot

[9] 308 U.S. 256, 1939. [10] 118 U.S., 425, 1886.

County Drainage District v. Baxter State Bank.[11] The bank held the bonds of the district, and these were in default. The district availed itself of the federal Municipal Bankruptcy Act, readjusted its debt, and secured from the federal district court a decree affirming this readjustment. No appeal was taken from this decree. Later, on a similar set of facts, the Municipal Banking Act was held void in Ashton v. Cameron County Water Improvement District.[12] Obviously the readjustment of the Chicot County Drainage District's debt was accomplished under an unconstitutional statute, and the bank sought to open the case and assert its full claims. In an opinion by Chief Justice Hughes, the Court held that the debt readjustment in the present case is *res judicata*. A full and complete trial was had, no constitutional questions were raised, and the decision reached is not now open to collateral attack. Referring to the doctrine of Norton v. Shelby County, the Chief Justice declared that it must be taken "with qualifications." He observes: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects—with respect to particular relations, individual and corporate, and particular conduct, private or official." Thus the doctrine of *res judicata* may be invoked to prevent the injustice or disruption of vested interests which would result from what the Chief Justice calls the "principle of absolute retroactive invalidity."

2. ORIGINAL JURISDICTION OF THE SUPREME COURT—SUITS BETWEEN STATES

May a state invoke the original jurisdiction of the Supreme Court in a suit against another state to collect taxes due it from a citizen of that state? In Massachusetts v. Missouri,[13] the Supreme Court held not. A citizen of Massachusetts, resident there, died leaving property in that state. She had also created trusts of securities which were kept in Missouri, and the trustees were residents of Missouri. Both Massachusetts and Missouri sought to collect estate taxes on the transfer of these trusts. Massachusetts brought action in the Supreme Court to prevent Missouri from collecting her tax. Speaking through Chief Justice Hughes, the Court declined to take jurisdiction. The opinion ran as follows: First, there is no justiciable controversy between the two states as such, since each is entitled to levy its tax on the trusts in question, and the amount of the trusts is sufficient to satisfy both demands. The case differs from Texas v. Florida,[14] where

[11] 308 U.S. 371, 1940.
[12] 298 U.S. 513, 1936. See this REVIEW, Vol. 31, p. 258.
[13] 308 U.S. 1, 1939. [14] 306 U.S. 398, 1939. See this REVIEW, Vol. 34, p. 262.

the Court took jurisdiction on the ground that the amount of the estate was not sufficient to satisfy the tax claims of four states plus the federal government. Second, Missouri tax provisions exempt from taxation intangible estates of non-residents domiciled in states which allow reciprocal exemptions. Massachusetts does extend this reciprocal exemption. This Missouri provision, however, is not a compact between the two states and does not support a right of action by Massachusetts against Missouri. Third, Massachusetts contends that the action may be considered as a suit by Massachusetts against the trustees in Missouri for the collection of the Massachusetts tax, and that it therefore falls within the provision of the Judiciary Article giving the Court jurisdiction in suits "between a state and citizens of another state." Assuming it to be such a suit, the Court is not obliged to take jurisdiction in every case in which it possesses it, but may in its discretion decline to do so if another suitable forum exists. This rule rests upon considerations of convenience and the need of protecting the Supreme Court from a flood of litigation. The Supreme Court is not obliged to take jurisdiction in "actions by states to recover taxes claimed to be payable by citizens of other states." In the present case, it does not appear that Massachusetts is in any way barred from suing the Missouri trustees in the courts of Missouri.

Arkansas v. Tennessee[15] settled a boundary dispute arising from a change in the course of the Mississippi River which took place in the year 1821. This avulsion cut across the neck of a peninsula of land, thereby placing in dispute title to the peninsula thus cut off. Jurisdiction over the land has been claimed and exercised by Tennessee since 1826. Affirming the findings of a Special Master, the Court sustained the jurisdiction of Tennessee on the basis of prescription and acquiescence on the part of Arkansas. This principle of prescription overrides the old doctrine of *thalweg* which places the boundary between states at the middle of the main channel of any dividing water.

The deference, to the point of tenderness, with which the Supreme Court deals with states of the Union characterizes its opinion in Wyoming v. Colorado.[16] The Laramie River runs between the two states. A previous decree of the Supreme Court had determined the exact amount of water which Colorado might divert from the river.[17] Evidence was presented by Wyoming that Colorado had diverted more than this, and Wyoming sought to have Colorado adjudged in contempt for violation of the decree. This raised two questions; first, is the decree enforceable against Colorado, and second, if it is, should Colorado be adjudged in contempt? Chief Justice Hughes, speaking for the Court, declared that Colorado is in contempt for violating the decree, although it is not shown that Wyoming has

[15] 310 U.S. 563, 1940. [16] 309 U.S. 572, 1940.
[17] Wyoming v. Colorado, 298 U.S. 573, 1936.

been injured. The record showed some evidence of acquiescence upon the part of Wyoming officials in the unlawful acts of Colorado. The Chief Justice therefore concludes: "In the light of all the circumstances, we think it sufficiently appears that there was a period of uncertainty and room for misunderstanding which may be considered in extenuation. In the future there will be no ground for any possible misapprehension. . . . " The petition of Wyoming was accordingly denied, with an equal division of the costs. In short, while Colorado is guilty of contempt, the Court will not do anything about it now.

Another state, Illinois, found itself under discipline in the case of Wisconsin v. Illinois.[18] This is the latest phase of the important litigation in which most of the states bordering on the Great Lakes prevented Illlinois from continuing to lower the lake level by excessive diversion of water through the Chicago Drainage Canal. In 1930, the Court handed down a decree enjoining Illinois from diverting more than an annual average of 1,500 cubic feet per second after December 1, 1938.[19] In the meantime, sanitary protection to the city of Chicago was to be built up through the construction of adequate sewage disposal plants. In the present case, Illinois sought permission to divert 5,000 cubic feet per second until the end of 1942, when the sewage disposal plants would be completed. The Court held *per curiam* that Illinois had failed to show that it had employed all possible means at its command to complete the construction in time. Notwithstanding this, the Court appointed a Master to consider all contingencies and report back his findings.

3. SUABILITY OF THE GOVERNMENT BY CONSENT

When Congress created the Federal Housing Administration in 1934, it provided that the Administrator, in carrying out the provisions of the act, "be authorized, in his official capacity, to sue and be sued in a court of competent jurisdiction, State or Federal." In Federal Housing Administration v. Burr,[20] the question is raised whether this provision permits a creditor of an employee of the Federal Housing Administration to bring action of garnishment against his salary. Speaking through Mr. Justice Douglas, the Court holds that it does. Congress was not obliged to waive the Federal Housing Administration's immunity from suit, but when it did so, it included within the right to sue a normal action to garnishee wages, since this is a customary form of suit. What the opinion gives with one hand, however, it appears to take away with the other. The statute provides that all claims against the Federal Housing Administration "shall be paid out of funds made available by the Act." But only those funds are

[18] 309 U.S. 569, 1940.

[19] Wisconsin v. Illinois, 281 U.S. 179, 1930. See this REVIEW, Vol. 25, p. 79.

[20] 309 U.S. 242, 1940.

subject to execution which the Federal Housing Administration has in its own possession free from Treasury control. The statute gives no right to reach governmental funds generally. Since the funds of the Federal Housing Administration are all deposited with the Treasurer of the United States and may be paid out only through the Chief Disbursing Officer of the Treasury, it does not appear that the creditor in this case is going to get his money. Mr. Justice Douglas consoles him by observing: "Since the respondent obtains its right to sue from Congress, it necessarily must take it subject to such restrictions as have been imposed. The fact that execution may prove futile is one of the notorious incidents of litigation, as is the fact that execution is not an indispensable adjunct of the judicial process."

4. JURISDICTION—INTEREST OF PARTIES

A case of substantial practical importance is that of Perkins v. Lukens Steel Co.,[21] arising under the Public Contracts Act of 1936. This act provides that those who sell goods to the government under contract shall pay the minimum wages currently paid in the "locality in which . . . the supplies are to be manufactured or supplied." The Secretary of Labor is to delimit these localities. Acting under the statute, the Secretary determined the minimum wage for the iron and steel industry in six localities set up by administrative action after public hearings. The steel company in this case wishes to sell steel products to the government. It contends that the determination of the six localities by the Secretary is arbitrary and that more than six ought to be established. These administrative regulations prevent it from bidding for government contracts upon what it alleges to be a fair basis. It accordingly sought an injunction to restrain all government officials and agents from enforcing the regulations of the Secretary of Labor, not only as they apply to the petitioner, but as they apply to the entire iron and steel industry. The United States Circuit Court of Appeals for the District of Columbia granted such an injunction. The Supreme Court, in an opinion by Mr. Justice Black, reversed this decision and denied the petition. The opinion runs as follows: First, the action of the lower court in granting the relief asked for goes beyond the limits of any existing controversy. It extends to an entire industry; it applies to many public officials; it affects the status of persons whose rights and legal relations have not been asserted. The claim of the petitioners is a vague and general one in which they might be joined by almost any member of the public seeking to prevent what seemed to him an erroneous administration of the law. Second, the petitioners do not have a legal cause of action. The government is not obliged to purchase supplies from private individuals; it may lawfully produce its own iron and steel in its own plants. No one has a

[21] 310 U.S. 113, 1940.

constitutional or statutory right to sell anything to the government on his own terms. The provisions under attack embody the government's purpose "to impose obligations upon those favored with government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment." The statute exerts no regulatory power over private business. If its provisions are unpalatable, the petitioners may escape them by declining to sell to the government.

5. JUDICIAL REVIEW OF ADMINISTRATION

In two cases, the Court dealt with administrative rulings of the Federal Communications Commission. In the first of these, the commission refused to license a broadcasting station because of the applicant's lack of financial qualification. The federal circuit court of appeals found that this finding of inadequate financial status was grounded upon an erroneous interpretation of state law and remanded the case for rehearing. The commission then proceeded to reconsider the applicant's petition for a license along with applications from two rival firms. In an opinion by Mr. Justice Frankfurter, the commission's right thus to consider the three applications together was sustained over the contention of the original applicant that its case must receive prior action under the mandate of the circuit court of appeals. The statute charges the commission with the duty of issuing broadcasting licenses under the criterion of "public convenience, interest, or necessity." The duty to apply this standard is not to be hampered by technical rules of procedure. The original finding of the commission is not the decision of an inferior court, but the decision of an administrative body. The mandate of the court of appeals does nothing but require the commission to correct the legal error originally made. The commission is not only free, but obligated, to pass thereafter upon the applicant's petition, together with rival petitions, in the light of the standard of "public convenience, interest, or necessity." This is the case of Federal Communications Commission v. Pottsville Broadcasting Co.[22]

In Federal Communications Commission v. Sanders Brothers Radio Station,[23] the company and a competitor both applied to the commission for a license to broadcast from Dubuque, Iowa. The Sanders Brothers station had broadcast for some time from a nearby point. Its competitor had never broadcast. Evidence was presented to the commission to show that there was not sufficient business in Dubuque to support the two stations. It was alleged that advertisers would have to be drawn away from the existing station if the new one were to survive. The commission, however, found that public interest, convenience, and necessity would be served by

[22] 309 U.S. 134, 1940. [23] 309 U.S. 470, 1940.

granting both licenses, and this was done. The Sanders Brothers station appealed to the Circuit Court of Appeals for the District of Columbia, alleging that it would suffer economic injury if the competing station were licensed and asking that the commission's order granting that license be set aside as arbitrary and capricious. A decision of the circuit court of appeals thus setting aside the commission's order was reversed by the Supreme Court in an opinion by Mr. Justice Roberts. The commission was created to control broadcasting in the public interest. The act does not, however make broadcasting stations common carriers or monopolies, nor does it abandon in respect to broadcasting the principle of free competition. An injured competitor in the radio field has no standing to attack the unwelcome competition unless he can show that the public interest itself is jeopardized. While such economic injury is not to be disregarded by the commission, it does not call for separate and independent consideration in determining whether to grant or withhold a license. The petitioner here could properly raise the issue in the form in which he did, but the findings of the commission that the licensing of both stations served the public interest were sufficiently supported by evidence to sustain them.

Several cases involved judicial review of decisions of the National Labor Relations Board. In American Federation of Labor v. National Labor Relations Board,[24] the issue was whether the judicial review of board findings provided in the Wagner Act extended to the board's order certifying a C.I.O. organization of workers as the exclusive bargaining representative of all the longshoremen on the Pacific coast. The A. F. of L., claiming itself to be aggrieved by this order of the board, alleged that the statute does not contemplate any such widespread blanket certification of employee representatives to be effective over so wide an area. The Court, speaking through Mr. Justice Stone, held that the history of the Wagner Act indicated clear congressional intention to exclude certifications of employee representatives from judicial review. Since the federal courts had not before exercised such judicial review, there is no denial of due process by withholding it from them in the present statute.

In National Labor Relations Board v. Falk Corporation,[25] the board found that the company had engaged in unfair labor practices and issued a cease and desist order to compel their discontinuance. It ordered the company to disestablish its independent or company union before the date upon which an election was ordered for the purpose of selecting bargaining representatives for the workers. The board asked the circuit court of appeals to enforce the order. The court affirmed the finding of unfair labor practices and the order for their discontinuance, but it modified this order by ruling that the board could not eliminate the independent union, if

[24] 308 U.S. 401, 1940. [25] 308 U.S. 453, 1940.

purged of company influence, from the ballot to be used in the election of employee representatives. It also omitted that portion of the board's order which required the company to post notices of its intention to "cease and desist." In an opinion by Mr. Justice Black, the Supreme Court sustained the board's original order. The board, alone, is granted power to determine, through the holding of elections, "suitable" representatives of the workers for purposes of collective bargaining. The circuit court of appeals had no authority to give the board directions as to how to perform this task. The board's findings that the independent union could never emancipate itself from company domination is supported by substantial evidence. There is also statutory sanction for the board's order that the company post notices of its intention to comply with the law. This is important as conveying to the employees a sense of freedom from hostile influence.

National Labor Relations Board v. Waterman Steamship Corporation[26] held that certain findings of fact made by the board were supported by substantial evidence. These findings were that the company had terminated the "tenure of employment" of certain seamen because of their affiliation with the C.I.O., and also that the company was according pass privileges on its ships to representatives of the A. F. of L. but not of the C.I.O. The company claimed that the cessation of the tenure of employment of the seamen in question was the normal one resulting from the termination of the written articles under which every seaman sails. In an opinion by Mr. Justice Black, it was stated that ample evidence showed that these articles exist for the protection of the seamen and that while they come to an end when the ship reaches its home port, they do not represent a termination of employment. They merely mean that the voyage is over.

Do persons injured by the failure of an employer to obey an order of the National Labor Relations Board commanding discontinuance of unfair labor practices have standing to petition a federal court to adjudge the employer in contempt? In Amalgamated Utility Workers v. Consolidated Edison Company[27] of New York, the Court, speaking through Chief Justice Hughes, held not. The board has exclusive jurisdiction to administer the act and issue orders for its enforcement. The unfair labor practices which the statute forbids are matters of public concern, just as are the unfair methods of competition forbidden by the Federal Trade Commission Act. Neither act creates any private right of action. If an employer disobeys a lawful order of the board, it is the board's responsibility to seek enforcement through appropriate procedures.

[26] 309 U.S. 206, 1940.
[27] 309 U.S. 261, 1940.

III. BILL OF RIGHTS

Two cases involved wire-tapping. While both arose under the provisions of a federal statute, they have an indirect bearing upon problems of search and seizure under the Fourth Amendment. In Nardone v. United States,[28] decided in 1937, the Supreme Court reversed federal convictions for crime because they were procured by evidence secured by federal officers through the tapping of telephone wires. The case rested upon the provision of the Federal Communications Act of 1934 forbidding any person to intercept and divulge communications by telephone and telegraph unless authorized by the sender. Nardone was granted a new trial in which this intercepted evidence was excluded. The trial judge refused, however, to allow Nardone to question the prosecution as to the uses to which it had put the information secured by the unlawful wire-tapping. In an opinion by Mr. Justice Frankfurter, the Court held this to be reversible error. "The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wire-tapping was unlawfully employed. Once that is established—as was plainly done here—the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree. This leaves ample opportunity to the government to convince the trial court that its proof had an independent origin." This is the case of Nardone v. United States.[29]

In Weiss v. United States,[30] the defendants were convicted of using the mails to defraud certain insurance companies. The government's vital evidence was obtained by extended and systematic tapping of telephone wires. Both interstate and intrastate telephone calls were intercepted. Some of the defendants turned state's evidence after listening to phonograph records of the conversations thus secured, and gave the government permission to use this evidence. In an opinion by Mr. Justice Roberts, the Court disposed of two questions raised by these facts. It held first that the Federal Communications Act forbids the intercepting and divulging of intrastate as well as interstate telephone communications. While the statutory provision is obscure on this point, the Court justifies its view by the fact that an interceptor cannot distinguish between interstate and intrastate messages. Secondly, the authorization by the defendants who turned state's evidence was ineffective to make the testimony admissible. The statute contemplates wholly voluntary authorization by the sender, while the permission here resulted from the senders' hope of securing leniency at the hands of prosecuting officials.

Two cases arose under the due process clause of the Fifth Amendment.

[28] 302 U.S. 379, 1937. See this REVIEW, Vol. 33, p. 250.
[29] 308 U.S. 338, 1939. [30] 308 U.S. 321, 1939.

In Yearsley v. Ross Construction Company,[31] the Court, speaking through Chief Justice Hughes, found no denial of due process in refusing to a property owner injured by river improvement work carried on by a private company under contract with the government the right to sue the contractor for damages. Since the work is authorized by the government and is being done for its benefit, incidental damages to private property are attributable to the government and not to the contractor doing the work. The property owner is entitled to compensation for property taken or directly damaged, but his redress must be secured by direct suit against the government in the Court of Claims.

In Paramino Lumber Company v. Marshall,[32] the question arose whether Congress by private act could properly order the United States Compensation Commission to reopen a compensation case, review it, and issue a new order after the statutory time limit for such reconsideration had expired. In an opinion by Mr. Justice Reed, the Court held that this does not deny due process of law. It does not set aside a judgment, create a new right of action, or direct the entry of an award. It is a curative act, designed to remedy a mistake in administration. It was urged that the equal protection clause of the Fourteenth Amendment should be read into the due process clause of the Fifth Amendment, and that if so read the Fifth Amendment would forbid this private act. The Court rejects this interpretation. Private acts are not forbidden by the Constitution, nor is "this legislation an excursion of Congress into the judicial function."

IV. TWENTY-FIRST AMENDMENT

The complete and exclusive nature of the authority over intoxicating liquors within their borders which the Twenty-First Amendment gives to the states is emphasized in Ziffrin v. Reeves.[33] The Kentucky laws relating to liquor permit its manufacture under prescribed conditions and surround the transportation and sale of liquor with rigid restrictions. The appellant is an Indiana corporation licensed to carry on interstate commerce as a contract motor carrier under the federal act of 1935. It transported whiskey from Kentucky to Illinois in violation of the Kentucky state regulations and sought to enjoin the Kentucky authorities from enforcing state licensing and penal provisions against it. It claimed that since its business was exclusively interstate commerce, state authority could not properly reach it. In an opinion by Mr. Justice McReynolds, the Court held that the Twenty-First Amendment gives to states the power to legislate regarding liquor unfettered by any limitations arising from the commerce clause. The Motor Carrier Act of 1935 gives the appellant no fed-

[31] 309 U.S. 18, 1940.
[32] 309 U.S. 370, 1940.
[33] 308 U.S. 132, 1939.

eral rights which may be set up against the complete authority which the amendment gives to the state.

V. STATUTORY CONSTRUCTION

Three very important cases under the federal antitrust acts deserve comment although they involve no constitutional questions. The most conspicuous of these is the case of Apex Hosiery Company v. Leader,[34] in which a divided court held that a sit-down strike which tied up for months the productive capacity of a factory supplying the interstate market is not a restraint of trade within the prohibitions of the Sherman Act. The facts were not in dispute. The company employed some 2,500 men and sold 80 per cent of its $5,000,000 annual output outside the state. The employees struck in an effort to secure a closed shop agreement, took possession of the plant, and carried on a sit-down strike for more than six weeks. The strikers were guilty of violence and the wanton destruction of the company's property. The company brought suit against the union conducting the strike for triple damages under the Sherman Act, and received a verdict in the trial court. The triple damage award amounted to $711,932.55. The Supreme Court, speaking through Mr. Justice Stone, set aside the verdict on the ground that the Sherman Act was inapplicable to the conduct of the strikers. There is no question that the strikers were guilty of criminal and tortious conduct. Such conduct, however, calls for redress in the criminal and civil courts of the state, and these courts are open to the injured company. The activities of the strikers do not constitute the restraints of trade or commerce which the Sherman Act condemns. The history of that statute shows clearly the purpose of its framers to reach and prevent restraints upon commercial competition. The decisions of the Supreme Court have rested upon this interpretation. The theory was elaborated in the Standard Oil Company and American Tobacco Company cases in 1911[35] in which the Court announced its famous "rule of reason," which applied the prohibitions of the Sherman Act only to those restraints of trade known to the common law and unreasonably restricting interstate competition. The Court reviews the cases, beginning with Loewe v. Lawler[36] in 1908, in which federal antitrust laws have been enforced against labor organizations. In all of these cases, the labor union activity, through such devices as the secondary boycott, had actually sought to interfere with free competition in interstate commerce. In no case where interstate competition has not been a major objective of the labor union activity has the Court held that the mere cessation or obstruction of interstate commerce amounted to a restraint of trade within the meaning of the Sherman Act. To apply the antitrust laws to all acts which interrupt the production

[34] 310 U.S. 469, 1940.
[35] 221 U.S. 1, and 221 U.S. 106, 1911.
[36] 208 U.S. 274, 1908.

of goods for the interstate market would bring within their scope practically every strike. This Congress clearly did not intend to do. The mere fact of violence and unlawful conduct in the present case does not bring the strike within the provisions of the statute. Chief Justice Hughes dissented in an opinion in which Justices McReynolds and Roberts concurred. He differed with the majority in their construction of the Court's earlier decisions and asserted that the labor union activity in the present case fell clearly within the definition of a conspiracy in restraint of trade forbidden by the Sherman Act.

In United States v. Socony-Vacuum Oil Company,[37] in a five-to-two decision, the Court, speaking through Mr. Justice Douglas upheld the conviction of the defendant for violation of the Sherman Act. The case is an interesting one, though the facts and legal issues are much too complicated for complete recital. The defendants had worked out various collective arrangements and agreements for stabilizing the oil industry in the Midwest territory. It was not disputed that they had done an effective job and that they had pulled the industry out of the slump due to overproduction and ruinous price cutting. The efforts culminating in the illegal conspiracy antedated the N.R.A., were later carried on in coöperation with N.R.A. administrators, and were at many points examined and approved by various federal officials. After the collapse of the N.R.A. with the Schechter decision,[38] the defendants were in effect doing as private persons what the government had itself tried to do by legislation. In the judgment of the majority, none of this constituted a defense. No federal officials have any authority to authorize or condone violations of the law. The activities of the defendants resulted in placing in their hands the power to fix gasoline prices, and there was evidence that they had exercised that power. It is no defense that the prices so fixed may have been reasonable, since the power to fix reasonable prices includes the power to fix unreasonable prices. A conspiracy to fix prices is the most common type of conspiracy in restraint of trade forbidden by the Sherman Act. In spite of their alleged good intentions and the wholesome results which may have resulted in some cases from their activities, the defendants were guilty of criminal conduct under the Sherman Act. Justices Roberts and McReynolds dissented.

The relation of patent rights to the antitrust laws was involved in Ethyl Gasoline Corporation v. United States,[39] and the company was enjoined from imposing upon licensees distributing its product the restrictive conditions which it had been enforcing. The company owns the patents under which lead-treated gasoline may be produced. To secure ethyl

[37] 310 U.S. 150, 1940.
[38] Schechter v. United States, 295 U.S. 495, 1935. See this REVIEW, Vol. 30, p. 58.
[39] 309 U.S. 436, 1940.

gasoline from a licensed refiner, a jobber must have a license from the appellant. Of the twelve thousand jobbers in the United States, eleven thousand are licensed by the appellant. The appellant has issued licenses to 123 refiners, including most of the large ones. These refiners refine 88 per cent of all the gasoline sold in the country. The appellants do not charge a royalty upon the sale of their product, but they sell to their licensees their requirements of the patented fluid. They impose no rigid resale price agreements. They have, however, drawn up a general code of obligations applicable to licensed refiners and jobbers. Some of the provisions of this code relate to the purity of the product, to the proportions in which the patented fluid shall be mixed with gasoline, and particularly to a differential to be maintained between the retail price of ethyl gasoline and the next best non-premium grade sold. Speaking through Mr. Justice Stone, the Court held that the restraints imposed by the appellant upon those to whom it sells its patented products go far beyond any rights legitimately incident to the patent itself and amount, particularly those involving price control, to an unlawful restraint of trade under the Sherman Act. It is not important that the appellant did not establish an iron-clad code of resale prices. Its enforcement of its restrictions upon licensees has been far from systematic and relentless. Some of the pressure to enforce compliance came in the form of an appeal to a "code of ethics" for the industry. Where possible, the amenities have been observed; but the industry has been fully educated to the realization that the appellant possesses power to dictate both prices and trade policy.

QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. DUE PROCESS OF LAW

1. *Civil Rights.* Constitutional protection to freedom of press and speech was tightened in Schneider v. Irvington.[40] Four cases were here merged, all of them involving the validity of municipal ordinances (of Los Angeles, Milwaukee, Worcester, Mass., and Irvington, N. J.) forbidding the distribution of handbills in the streets and other public places. The Irvington ordinance went still further and forbade canvassing or the distribution of literature from house to house without permission from the police. The ordinances were defended as reasonable police regulations to prevent the littering of the streets, and the protection of citizens from unsolicited canvassing with its incidental annoyance and danger. In an opinion by Mr. Justice Roberts, the Court held the four ordinances void as abridging the freedom of speech and press protected by the due process clause of the Fourteenth Amendment from invasion by the states. Lovell v. Griffin,[41]

[40] 308 U.S. 147, 1939. [41] 303 U.S. 444, 1938. See this REVIEW, Vol. 33, p. 259.

decided in 1938, held that freedom of the press includes the right to distribute pamphlets and circulars and held void an ordinance which forbade such circulation without the prior permission of the city manager. Cities may have a duty to keep their streets clean and free from obstruction, but as a means of doing so they may not forbid a person rightfully on the streets from handing literature to one willing to receive it. The streets are natural and proper places for the dissemination of information and opinion. The public convenience of clean streets does not justify a regulation which deprives citizens of this constitutional right. The ordinance restricting canvassing, which is not limited to commercial canvassing, and in this case was violated by one distributing religious tracts from house to house, establishes a prior censorship upon the distribution of literature or the communication of views. The administration of this censorship rests in the discretion of police officials. The ordinance violates the freedom of both speech and press. The city may properly control commercial canvassing and may take suitable precautions against trespassing and frauds committed by canvassers. But it may not enforce the drastic prohibition here involved.

It is a logical development of the doctrine just discussed that peaceful picketing is included within freedom of speech and press, and the Court so decided in two important cases. In Thornhill v. Alabama,[42] the state law made it a misdemeanor to loiter or picket on or near the premises of any one engaged in a lawful business, for the purpose of dissuading others from trading with or working for those engaged in that business. Thornhill and others were convicted under the statute. They had been guilty of no violence and had resorted to no threats or intimidation. In an opinion by Mr. Justice Murphy, the statute was held void as a denial of free speech amounting to a denial of due process. The validity of the statute must be judged from its face. By its own terms, it would prevent "every practicable method whereby the facts of a labor dispute may be publicized in the vicinity of the place of business of an employer." It is void, therefore, on its face. The orderly dissemination of information concerning the facts of a labor dispute is "within that area of free discussion that is guaranteed by the Constitution." Labor relations are matters of great public importance, and free discussion of the problems involved is essential to the intelligent handling of those problems. Freedom of speech extends to the means used to secure an informed and educated public opinion with respect to a matter of public concern. The state has the right and duty to protect life and property and to maintain public order. Picketing which jeopardizes any of these public interests may be forbidden. But a showing of clear and present danger of substantive evils is necessary to abridge the normal liberty of discussion here involved. No such showing could be

[42] 310 U.S. 88, 1940.

made in the present case. A similar result was reached in Carlson v. California.[43] Here a county ordinance not only forbade picketing in terms similar to those in the Alabama statute, but further forbade the display of banners, placards, and the like designed to turn business or workers away from a factory or business establishment. Here again the picketing was peaceful and orderly. Speaking again through Mr. Justice Murphy, the Court held that the display of signs and banners is a natural and appropriate means of conveying information on matters of public concern, and is therefore part of the freedom of the press protected against state infringement by the Fourteenth Amendment. The ordinance in question does not forbid the display of all signs and banners, but only those which relate to labor disputes.

The Court disposed of the highly controversial compulsory "flag salute" issue in the case of Minersville School District v. Gobitis.[44] The Gobitis children, aged twelve and ten, were expelled from the public schools of Minersville, Pennsylvania, for refusing to salute the national flag as part of a daily school exercise. Such salute was required of both teachers and pupils by the board of education. The Gobitis family are members of the sect known as "Jehovah's Witnesses," for whom the Bible as the Word of God is the supreme authority. The children had been brought up to believe that to salute the flag was forbidden by the Bible. As a result of their expulsion from the public school, their parents were required by the compulsory education laws of the state to place them in private schools. The father sought an injunction to restrain the local school authorities from continuing to require the flag salute ceremony as a condition of his children's attendance at the public school. He alleged that the requirement is a violation of the guarantee of religious freedom in the First Amendment, a guarantee which has been absorbed into the due process protection of the Fourteenth Amendment. The Court rejected his contention and upheld the flag salute requirement. The opinion of Mr. Justice Frankfurter runs as follows. First, while the Constitution protects freedom of religious belief, that freedom is not absolute and does not relieve the citizen of his obligation to obey the general laws of the land or discharge his political responsibiilities. The case calls for a compromise of the two conflicting interests involved, but "every possible leeway should be given to the claims of religious faith." Second, "national unity is the basis of national security. . . . The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people and transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. 'We live by symbols.' The flag is the symbol of our

[43] 310 U.S. 106, 1940. [44] 310 U.S. 586, 1940.

national unity, transcending all internal differences, however large, within the framework of the Constitution." Third, the rule of the local school board must be viewed as though it were the action of the state legislature. The question whether the flag salute requirement amounts in this case "to a lawless inroad on that freedom of conscience which the Constitution protects" is "an issue of educational policy for which the courtroom is not a proper arena." The law-making body has decided that the requirement is an appropriate means "to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious." For the Court to hold the requirement void as abridging religious liberty "would amount to no less than the pronouncement of a pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence." Fourth, the state cannot validly compel all children to attend the public schools. Pierce v. Society of Sisters.[45] "But it is a very different thing for this Court to exercise censorship over the conviction of legislatures that a particular program or exercise will best promote in the minds of children who attend the common schools an attachment to the institutions of their country." The opinion does not explain why it is different. Fifth, "for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effect of the exercise."

Mr. Justice Stone wrote a dissenting opinion which may be summarized as follows. First, the flag salute requirement is unique in the history of Anglo-American legislation. It not merely suppresses freedom of speech and the free exercise of religion, but it goes further and actually "seeks to coerce children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions." Second, while religious liberty is not absolute, but may be curtailed in the interest of public morals, safety, health, and good order, "it is a long step, and one which I am unable to take, to the position that the government may, as a supposed educational measure and as a means of disciplining the young, compel public affirmations which violate their religious conscience." Third, while saluting the flag may contribute to national unity, there are other ways of achieving that result besides "compelling the pupil to affirm that which he does not believe and by commanding a form of affirmance which violates his religious convictions." The government is not being deprived, by being made to waive the requirement in the present case, of any interest or function which it is entitled to maintain at the expense of the constitutional protection to religious liberty. Fourth,

[45] 268 U.S. 510, 1925. See this REVIEW, Vol. 20, p. 98.

infringements of personal liberties have always been justified, as here, "in the name of righteousness and the public good, and [there have been] few which have not been directed, as they are now, at politically helpless minorities." "If these guarantees are to have any meaning, they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion." The Court ought not to refrain from reviewing the legislative judgment as to the policy of the law where religious liberty as guaranteed by the Bill of Rights is at stake. Fifth, the interest of the state in maintaining discipline in the public schools does not justify the compulsion here imposed. "I cannot say that the inconveniences which may attend some sensible adjustment of school discipline in order that the religious convictions of these children may be spared, presents a problem so momentous or pressing as to outweigh the freedom from compulsory violation of religious faith which has been thought worthy of constitutional protection."

Mr. Justice Stone's opinion deserves a place in the classic literature of civil liberty. It seems to the writer to dispose effectively of the reasoning of the majority opinion. The opinion of Mr. Justice Frankfurter goes to the point of showing it to be a tenable view that national unity depends upon, or is enhanced by, having school children salute the flag. It does not go beyond that point. It falls far short of proving that national unity or any other desirable result will come from compelling school children publicly to affirm unfelt loyalties. All of the eloquence by which the majority extol the ceremony of flag saluting as a free expression of patriotism turns sour when used to describe the brutal compulsion which requires a sensitive and conscientious child to stultify himself in public. The decision in the case is disheartening for three reasons; first, because it is a departure from a long line of decisions protecting fundamental civil liberties; second, because it is an eight-to-one decision; third, because the opinion of the Court was written by Mr. Justice Frankfurter, long associated in the public mind with the vigorous defense of civil liberty.

In sharp contrast to the flag salute case is the case of Cantwell v. Connecticut,[46] also involving an issue of religious liberty. The case arose on these facts. Cantwell and his two sons are members of the sect "Jehovah's Witnesses." They went from house to house with books and pamphlets on religious subjects and with a portable phonograph with records describing the content of the books. Upon being admitted to a house, the Cantwells asked permission to play the records, offered the books and pamphlets for sale, and solicited funds for publishing the printed matter. None of the persons visited belonged to Jehovah's Witnesses. One of the

[46] 310 U.S. 296, 1940.

records described a book called "Enemies," which contained an attack upon the Catholic religion. Besides the house to house visits, Cantwell stopped two persons on the street, and asked and received permission to play a record. He played the record "Enemies." It happened that the two men listening were Catholics. They were incensed at the record, and testified that they were tempted to strike Cantwell but that in view of their protests he went away. He was neither truculent nor argumentative, and there was no disorder or violence. The Cantwells were convicted on two indictments. One charged violation of a state statute making it a crime for any person to solicit or canvass from house to house for any religious, charitable, or philanthropic cause without securing the prior approval of the secretary of the public welfare council, who is authorized to determine whether the cause is a religious one, is bona fide, and conforms to reasonable standards of efficiency and integrity. The Cantwells had not secured such approval. The other charge was against the elder Cantwell, who played the records on the street, for the common law offense of inciting a breach of the peace. In a unanimous decision, the Court, speaking through Mr. Justice Roberts, held that conviction on both counts denied due process of law under the Fourteenth Amendment by abridging freedom of communication and freedom of religion. The state may surround the solicitation of funds for religious and charitable purposes with reasonable regulations, but to require prior approval by the secretary of the public welfare council, an approval based upon the exercise of judgment and opinion, constitutes a "censorship of religion as a means of determining its right to survive," and denies due process. The defect is not corrected by the fact that arbitrary, capricious, or corrupt action by the secretary is subject to review by the courts. The previous restraint vitiates the provision. To construe Cantwell's conduct on the public street as incitement to breach of the peace is also to abridge his freedom to communicate his views peacefully and to exercise his religious liberty. There was no assault, threat of bodily harm, discourtesy, or personal abuse upon Cantwell's part. While his language, or that of the phonograph record, was provocative and aroused resentment, it was not obscene, profane, or abusive. It fell within the area within which expression may be given to differences of religious opinion, and it was accordingly protected by the due process clause. It raised no clear and present menace to public peace and order.

Three due process cases dealt with the rights of persons accused of crime. Two were "third degree" cases and set aside convictions based on confessions secured by brutal and unlawful methods. In Chambers v. Florida,[47] the record showed that Chambers and three other young Negroes charged with the murder of a white man were kept in custody and

[47] 309 U.S. 227, 1940.

questioned, one by one, with no opportunity between grillings to obtain rest or sleep, for five days and nights. It was made abundantly clear to them by the sheriff and his aides that the questioning would continue until they made "adequate" confessions. Speaking through Mr. Justice Black, the Court said: "We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. . . . Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death." A similar result was reached upon a very similar set of facts in the case of White v. Texas,[48] in which Mr. Justice Black again spoke for the Court. In Avery v. Alabama,[49] the question was presented whether the accused had been denied his constitutional right of assistance of counsel. Avery was arrested for murder. He was arraigned on March 21, 1938. Two local attorneys were appointed by the court to defend him; pleas of not guilty were entered, and the presiding judge set his trial for March 23rd. The case was actually called for trial on the 24th, at which time his attorneys asked for a continuance on the ground that they had not had adequate time and opportunity to prepare his defense. The trial proceeded, however, and resulted in a verdict of guilty and the imposition of the death penalty. A new trial was sought on the ground of the failure to allow the requested continuance, but this was denied. Upon appeal, the supreme court of the state concluded that the trial judge had not abused his discretion in failing to continue the case. The Supreme Court, speaking through Mr. Justice Black, agreed that the benefit of assistance of counsel guaranteed by the Fourteenth Amendment had not been denied. The appointment of counsel had not been a mere formality, since the attorneys for the accused had contested every step of the way to a final conclusion of the case. The trial was held in a small rural community where witnesses and information were readily accessible, and the hearing on the motion for a new trial disclosed nothing to indicate that counsel could have done more for the accused than they did even if they had had more time.

2. *Police Power.* Minnesota's "psychopathic personality" statute was upheld in Minnesota *ex rel.* Pearson v. Probate Court.[50] This interesting act defines "psychopathic personality" as meaning "the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons." The state supreme court construed this statute to mean that there must be proof of a "habitual course of misconduct in sexual matters" on the part of

[48] 310 U.S. 530, 1940. [49] 308 U.S. 444, 1940. [50] 309 U.S. 270, 1940.

persons against whom a proceeding under the statute is directed, which has shown "an utter lack of power to control their sexual impulses." With certain qualifications, "psychopathic personalities" are to be dealt with by the state under the general laws relating to the insane. There are rigid procedural requirements for the protection of individuals brought under the law. Speaking through Chief Justice Hughes, the Court held that the act, as construed by the state court, was not too vague and indefinite to be valid under due process of law. The definitions employed are as "susceptible of proof as many of the criteria constantly applied in prosecutions for crime." The law does not deny equal protection because it does not include within its reach all emotionally unstable persons. The legislature may recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be clearest. There is no lack of procedural due process.

3. *Regulation of Business.* A Virginia statute forbids contracts of insurance by companies authorized to do business within the state "except through regularly constituted and registered resident agents or agencies of such companies." Such resident agents are entitled to receive the usual commissions allowed on such contracts, and are forbidden to share more than half of such commission with a non-resident broker. Insurance is normally sold either through agents or brokers. The agent is tied to his company. He builds up local good will, may finance premiums, assist in filing claims, and generally occupies a personal relationship between the insured and the company. The broker is not tied to one company and usually handles large-scale business. He secures large contracts by bargaining for the best terms from competing companies. He deals frequently through the medium of the master or "hotchpotch" policy, whereby the insured secures a better rate by pooling all his risks. Commissions may be sliced in handling this sort of business, and it is likely to be placed with companies operating in the large insurance centers. The Virginia statute requires the broker to operate in Virginia through a resident agent to whom the full customary commission is paid. Master policies and the concentration of insurance business in one large concern are thus discouraged by decentralizing it through the local agent and by increasing the costs. Osborn and others sought to enjoin the enforcement of the statute on the ground that it denies due process of law by restricting their freedom of action outside the state of Virginia and by subjecting that freedom of action to financial burdens. In a six-to-three decision, the Court, speaking through Mr. Justice Frankfurter, upheld the statute. This is the case of Osborn v. Ozlin.[51] The state has not sought to control the making of contracts beyond her borders. She has control over the issuance of insurance in Virginia and may exercise that control through the regulations here set up. Resident agents render services to insured persons which are more

[51] 310 U.S. 53, 1940.

valuable and necessary than those rendered by brokers. The legislature is entitled to its judgment that these more valuable services justify the requirement that insurance must all pass through the hands of such resident agents. This judgment is not arbitrary, and the judicial function does not therefore extend to the upsetting of it and the formation by the Court of an independent judgment. Mr. Justice Roberts dissented in an opinion in which Chief Justice Hughes and Mr. Justice McReynolds concurred. He said: "The plain effort of Virginia is to compel a non-resident to pay a resident of Virginia for services which the latter does not in fact render and is not required to render." This amounts to the exercise by the state of control over transactions beyond her jurisdiction.

The state of Texas has a statute establishing a system for the regulation of the production of oil. The administration of this is placed in the hands of the Railroad Commission. In 1938, the Commission issued a proration order covering the East Texas oil field. By this order each well was allowed to produce 2.32 per cent of its hourly productive capacity under unrestricted flow. This rule did not apply, however, to "marginal wells," which, if their low productive capacity were reduced, would have to be prematurely abandoned, and they were allowed to produce up to twenty barrels per day. These marginal wells are so numerous that of the total allowable output of all the wells in the East Texas area they were permitted to produce 385,000 barrels out of a total of 522,000 barrels. The application of the hourly potential formula to the other and normal wells allowed them to produce about twenty-two barrels per day. The respondent company sought to enjoin the enforcement of the proration order on the ground that it takes the company's property without due process of law by allowing the marginal wells to draw off more than their fair share of the subsurface oil deposits. In an opinion by Mr. Justice Frankfurter, in Railroad Commission v. Rowan & Nichols Oil Company,[52] the Court upheld the validity of the order and the statute. The situation is a very complex one. "Underlying these claims is as thorny a problem as has challenged the ingenuity and wisdom of legislatures." According to the conventional doctrine prevailing in Texas, the holder of an oil lease "owns" the oil in place beneath the surface. But by a further "rule of capture" that right is subject also to his neighbor's right to draw off the oil beneath the surface of the neighbor's land. "Every lease-holder, that is to say, is at the mercy of all those who adjoin him, since oil is a fugacious mineral, the movements of which are not confined by the artificial boundaries of surface tracts." For years, Texas has been trying to find an equitable formula by which to control the allowable production of oil from a common subsurface supply. The present statute and the order of the commission constitute an intelligent effort to solve this problem. The Court should be reluctant to substitute its judgment for that of the legislature on a matter so complex.

[52] 310 U.S. 573, 1940.

"Certainly in a domain of knowledge still shifting and growing, and in a field where judgment is therefore necessarily beset by the necessity of interferences bordering on conjecture even for those learned in the art, it would be presumptuous for courts, on the basis of conflicting expert testimony, to deem the view of the administrative tribunal, acting under legislative authority, offensive to the Fourteenth Amendment. . . . It is not for the Federal courts to supplant the Commission's judgment even in the face of convincing proof that a different result would have been better." Mr. Justice Roberts dissented. He protested against the Court's "abdicating its jurisdiction" to test the commission's order. There was adequate evidence to support the finding that the company's property was being taken without just compensation. By the order of the commission, "the worst property is raised to the level of the best and the best is lowered to the level of the worst." The relief asked for should have been granted. The Chief Justice and Mr. Justice McReynolds concurred in the dissent.

4. *Due Process in Taxation.* A Minnesota statute lays a tax on every railroad company owning or operating lines within the state of five per cent on the gross earnings derived from its operations within the state. This is in lieu of all other taxes. The Illinois Central owns no lines in Minnesota, but leases thirty miles of trackage there. It owns or operates 5,000 miles in other states. The railroad's operations in Minnesota produced income and debits resulting from the exchange of its freight cars with those of other roads operating in Minnesota, the using road being charged a dollar per day for each car. Offsetting these credits and debits against each other, the Illinois Central had a credit balance during the period involved of $2,503,353. The amount of this income attributed to Minnesota business for purposes of the tax was determined by computing the ratio of each using railroad's Minnesota revenue freight car miles to its system car miles. The Illinois Central claims that the tax imposed on it by this formula denies it the equal protection of the law and due process of law. In a unanimous decision, the Court, speaking through Mr. Justice Douglas, rejected these contentions and upheld the tax. This is the case of Illinois Central R. Co. v. Minnesota.[53] The apportionment of the tax to the Minnesota car mileage may not be a mathematically accurate formula for distributing the incidence of the tax, but it is at least approximate enough to be practical and fair. The railroad claims denial of equal protection because while it has but thirty miles of trackage in Minnesota it is liable to the tax as described, while railroads having no trackage in the state escape the tax entirely although they may have substantial revenues from the rental of cars used in Minnesota. This does not amount to arbitrary discrimination. All railroads operating in Minnesota are treated alike; they are taxed by the same formula. The roads which have no mileage in the state have not submitted themselves to the jurisdiction of the state.

[53] 309 U.S. 157, 1940.

The Court rejects the contention that the tax invalidly results in double taxation, since that is no longer a constitutional objection, even if true. Nor does the tax violate the commerce clause, since the state has a clear right to tax property used in interstate commerce.

2. EQUAL PROTECTION OF THE LAW

In 1902, in Connally v. Union Sewer Pipe Company,[54] the Court, in an opinion by Mr. Justice Harlan, held that the Illinois antitrust act of 1893 was unconstitutional as denying the equal protection of the laws because it did not apply to agricultural products or livestock in the hands of the producer or raiser. The present antitrust act of Texas contains a virtually identical exemption. In Tigner v. Texas,[55] the appellant was indicted for taking part in a conspiracy to fix the price of beer. He alleged the invalidity of the statute on the authority of the Connally case. If that case still states the law, his contention is sound and the indictment against him must be dismissed. The Court, speaking through Mr. Justice Frankfurter, held the Texas statute valid, observing that "Connally's case has been worn away by the erosion of time, and we are of opinion that it is no longer controlling," Farmers are scattered and "inured to habits of individualism." The legislature may reasonably conclude that combinations of farmers and live-stock producers either present no serious threat to the community, or at least a threat different in character and calling for different action from that of combinations of industrialists. "The equality at which the 'equal protection' clause aims is not a disembodied equality. . . . The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions. . . . The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same."

3. PRIVILEGES AND IMMUNITIES OF CITIZENS OF THE UNITED STATES

In Colgate v. Harvey[56] in 1935, a majority of the Court broke with the doctrine of the Slaughterhouse Cases[57] and held that the right to carry on business across state lines is one of the privileges and immunities of citizens of the United States protected from abridgment by the Fourteenth Amendment. Mr. Justice Stone dissented sharply. How much further the majority would have been willing to push this new interpretation of the privileges and immunities clause we may never know, for in Madden v. Kentucky[58] the Court overruled Colgate v. Harvey. The case involved a Kentucky statute imposing on Kentucky citizens an ad valorem tax of fifty cents per hundred dollars on bank deposits kept outside the state, and a tax of ten cents per hundred dollars on those kept within the state. The plaintiff urged that this discrimination denied the equal pro-

[54] 184 U.S. 540, 1902. [55] 310 U.S. 141, 1940. [56] 296 U.S. 404, 1935.
[57] 16 Wallace 36, 1873. [58] 309 U.S. 83, 1940.

tection of the laws and abridged the privileges and immunities of citizens of the United States. Speaking through Mr. Justice Reed, the Court held the tax valid. The difference between the two tax rates does not amount to arbitrary classification. The lower rate on deposits kept in the state may be justified on the ground that the local banks collect for the state its tax on intangibles, thus making the tax on local deposits almost self-enforcing. The tax on money kept outside the state is more difficult and costly to collect. The privileges and immunities clause of the Fourteenth Amendment does not lend federal protection to the privileges and immunities which spring from state citizenship. "We think it quite clear that the right to carry out an incident to a trade, business or calling such as the deposit of money in banks is not a privilege of national citizenship. . . . Appellant relies upon Colgate v. Harvey as a precedent to support his argument. . . . In view of our conclusions, we look upon the decision in that case as repugnant to the line of reasoning adopted here. As a consequence, Colgate v. Harvey must be and is overruled." Chief Justice Hughes concurred on the ground that the classification set up in the act was reasonable. Mr. Justice Roberts dissented, adhering to the views expressed in his opinion for the majority in Colgate v. Harvey. Mr. Justice McReynolds joined in the dissent.

II. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

New Jersey statutes passed in 1925, provided that shares in home loan associations could be withdrawn under certain procedures, and that such shares must be repaid by the association within six months of notice. In 1932 these statutes were amended, to protect the solvency of the associations, by prohibiting the withdrawal of shares under certain circumstances, and making withdrawal at any time much more difficult. In Veix v. Sixth Ward Building & Loan Association of Newark,[59] the Court, in an opinion by Mr. Justice Reed, held that the 1932 amendments did not impair the obligation of the contracts embodied in the purchase of shares prior to that date. Veix bought shares in 1928 and 1929, and in 1939 he sued the association for the withdrawal value of the shares, a suit barred by the statute of 1932. The obligation of the association under the original statutes to permit the withdrawal of shares was subject to the "paramount police power." All contracts are made subject to the police power. The police power is not confined to the protection of health, morals, and safety, but extends to economic needs as well. The act of 1932 may have been passed as an emergency measure to meet what was thought to be a temporary need; but it may pass from a temporary to a permanent piece of legislation without impairing the obligation of contracts.

[59] 310 U.S. 32, 1940.

III. FEDERAL AND STATE RELATIONS

1. STATE TAXATION OF FEDERAL AGENCIES

No new principles emerged from the four cases involving the state taxation of federal agencies. A Maryland statute levies a tax upon every recorded mortgage at the rate of ten cents per $100 of the amount of the debt. In Pittman v. Home Owners' Loan Corporation,[60] this tax is held inapplicable to a mortgage held in the state by the H.O.L.C. The Home Owners' Loan Act provides that the corporation, "its franchise, capital, reserves and surplus, and its loans and income shall be exempt from all state or municipal taxation." The mortgage was an indispensable element in the lending operations of the corporation. Congress could validly exempt the corporation and its activities from state taxation. In Buckstaff Bath House Company v. McKinley,[61] the state of Arkansas was allowed to collect from the petitioner its tax for the benefit of the state unemployment fund, although he operates under lease from the national government, a bath house on the government reservation known as Hot Springs National Park. Under the statutes defining jurisdiction over the reservation, the state tax is clearly applicable to the petitioner. Is he exempt under the section of the federal Social Security Act which relieves "an instrumentality of the United States" of such burden? The Court held that he is not such an instrumentality. The fact that he conducts a private business for profit under lease from the federal government does not make him an instrumentality of government. Tradesmens National Bank of Oklahoma City v. Oklahoma Tax Commission[62] held that the federal statutes permitting non-discriminatory state taxation of national banks allows the state to levy a franchise tax on national banking associations measured by their net income, including interest on tax-immune federal securities. The tax does not hit the tax-exempt securities themselves, and there is no discrimination against the national banks. In Colorado National Bank v. Bedford,[63] the Court held that the state could validly require the bank to collect for the state a tax upon the value of safe deposit box services rendered to its customers. Since the user of the safe deposit box pays the tax, it is not a burden upon a federal instrumentality.

2. STATE TAXATION AND INTERSTATE COMMERCE

Two cases of importance involved the applicability of the New York City sales tax to the sale of commodities in interstate or foreign commerce. This tax is laid upon purchasers for consumption of tangible personal property at the rate of two per cent of the sale price. The seller is required to collect the tax, and must pay it whether he collects it or not. In McGoldrick v. Gulf Oil Corporation,[64] the city attempted to collect the

[60] 308 U.S. 21, 1939. [61] 308 U.S. 358, 1939. [62] 309 U.S. 560, 1940.
[63] 310 U.S. 41, 1940. [64] 309 U.S. 414, 1940.

tax from the company upon the sale of certain oil. This oil was imported from abroad in the form of crude petroleum, was placed under bond by the customs authorities, was refined into fuel oil by the company, and was finally withdrawn from bond and sold in New York harbor to foreign bound vessels as ships stores to be used in fueling those vessels. The whole transaction was governed by provisions of the federal revenue acts and regulations of the Treasury. The imported oil was exempt from federal tariff duties. Embodied in this entire arrangement was a congressional policy, evidenced by the legislative history of the revenue acts, to "encourage importation of the crude oil for such use and thus to enable American refiners to meet foreign competition. . . . The purpose of the sale of tax-free oil to vessels engaged in foreign commerce was to promote that commerce." These policies are clearly within the constitutional power of Congress to regulate foreign commerce, and the New York City sales tax would cripple or defeat that policy. To allow the state to impose such a tax would lessen the competitive advantage conferred on the importer by Congress, since such tax might equal or exceed the remitted import duty. The clear intention of Congress is to prevent the oil from becoming at any stage a "part of the common mass of taxable property within the state." The sales tax is therefore inapplicable as "an infringement of the congressional regulation of commerce." The opinion of the Court was written by Mr. Justice Stone.

In contrast to this case is that of McGoldrick v. Berwind-White Coal Mining Company,[65] in which the New York City sales tax is held applicable to coal brought into New York City from Pennsylvania and there sold to public utility and steamship companies. In another opinion by Mr. Justice Stone, the majority of the Court find that the tax places no invalid burden upon interstate commerce. "It was not the purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of state tax burdens, merely because an incidental or consequential effect of the tax is an increase in the cost of doing the business. . . . " The local sales tax is not aimed at interstate commerce, nor does it discriminate against it. Its effect upon interstate commerce is similar to that of the state "use" taxes sustained in earlier decisions. Chief Justice Hughes dissented in an opinion in which Justices McReynolds and Roberts concurred. He regarded the tax as a direct burden upon interstate commerce, and therefore void, even though non-discriminatory. The tax is laid upon the delivery of the coal, which is an essential part of the interstate commerce transaction. "The tax as here applied is open to the same objection as a tariff upon the entrance of the coal into the state of New York, or a state tax upon the privilege of doing an interstate business, and in my

[65] 309 U.S. 33, 1940.

view it cannot be sustained without abandoning principles long established and a host of precedents soundly based."

An Arkansas statute forbids the entry into the state of any automobile or truck carrying over twenty gallons of gasoline to be used by the vehicle as motor fuel until the state tax of six and one-half cents per gallon has been paid. This requirement is held in McCarroll v. Dixie Greyhound Lines, Inc.,[66] to be an invalid burden upon interstate commerce. The company operates passenger busses from Memphis, Tennessee, across the state of Arkansas to St. Louis, Missouri, and back again. The total mileage involved each way is 342 miles—three in Tennessee, 78 in Arkansas, 261 in Missouri. The busses run about five miles on a gallon of gasoline. One gallon of gasoline is used in Tennessee, sixteen in Arkansas, and fifty-one in Missouri. When the busses arrive at the Arkansas line they usually have in their tanks about seventy-seven gallons of gasoline, of which sixteen will be used within the state. But in order to enter the state they must pay six and one-half cents upon every gallon of this amount above the twenty exempted by the statute. The Court, speaking through Mr. Justice McReynolds, held that this tax cannot be regarded as a reasonable compensation exacted by the state of Arkansas for the use by the company of its highways. Such a fair charge the state is clearly entitled to make. However, in the words of the lower court: "We are unable to comprehend how the use of the highways of one state can appropriately be measured by the amount of gasolene carried in the fuel tank of an interstate carrier for use upon the highways of another state." Mr. Justice Stone wrote a concurring opinion in which Justices Roberts and Reed joined. Mr. Justice Black dissented in an opinion in which Justices Frankfurter and Douglas concurred. In his view, the tax was not an unreasonable charge for the use of the state's highways, and the other questions raised by it should be left "for consideration of Congress in a nation-wide survey of the constantly increasing barriers to trade among the states."

The state of Tennessee lays an ad valorem tax upon all property in the state. Ordinary property is valued for purposes of this tax by county officials. The property of public service corporations is assessed by the Railroad and Public Utilities Commission, which is directed to ascertain the "actual cash value" of the corporate property situated in the state. The property of the Nashville, C. & St. L. Railway was assessed by the commission by a formula which placed a value upon the railroad's entire system, with certain deductions, and then calculated the share of this total value attributable to Tennessee by taking the ratio which the mileage of the road in Tennessee bears to the total mileage. In Nashville, C. & St.L. Railway v. Browning,[67] the Court, speaking through Mr. Justice

[66] 309 U.S. 176, 1940. [67] 310 U.S. 362, 1940.

Frankfurter, held the state tax valid. The commerce clause is not violated by the apportionment of the tax on the railroad's property according to mileage. While the formula may not be mathematically accurate, it is sufficiently so to make it unwarrantable for the Court to set aside the combined judgment of the state commission and state courts that the apportionment is equitable. The tax was attacked under the Fourteenth Amendment on the ground that while the property of public service companies is appraised at its full cash value, other property in the state has for forty years been systematically and intentionally undervalued. This, however, does not deny the equal protection of the laws. While some states have tax uniformity clauses in their constitutions which would forbid this discrimination in the assessment of property, the Fourteenth Amendment imposes no such rule of uniformity. It permits the state to apply different yardsticks to different classes of property. The long-established practice of undervaluing ordinary property for purposes of taxation has embodied in the law of the state a traditional discrimination, which the state could have written into its taxing statutes had it seen fit to do so.

3. STATE POLICE POWER AND INTERSTATE COMMERCE

Maurer v. Hamilton[68] involved a conflict between a state safety regulation applicable to interstate trucks and an order of the Interstate Commerce Commission issued under the supposed authority of the Federal Motor Carrier Act of 1935. A Pennsylvania statute forbids the operation over the highways of the state of any motor vehicle "carrying any other vehicle over the head of the operator of such carrier vehicle." This was aimed at the specially constructed trucks on which new automobiles are transported. Evidence collected by officers of the state tended to show that this mode of transportation was dangerous in many ways. Maurer sought an injunction against the enforcement of this regulation against him. Before he brought his action, the Interstate Commerce Commission, acting under the provisions of the Motor Carrier Act of 1935, had issued certain regulations with respect to the safety of operation and equipment of common and contract carriers in interstate commerce. These regulations contained no provisions specifically applying to cars carried over the cabs of the transporting vehicles. In 1939, however, the commission issued a report of an investigation of "car over cab operations" in which it announced the conclusion that evidence failed to show such operations to be unsafe, and found no reasons for forbidding them. "The operations of vehicles so equipped are therefore permitted by the existing regulations, and there is no need for change." In a unanimous decision, the Court, speaking through Mr. Justice Stone, held that the commission had

[68] 309 U.S. 598, 1940.

exceeded its authority and that the Pennsylvania statute was validly enforceable against interstate carriers operating in the state. The Pennsylvania statute should be classed as a regulation of the "sizes and weight" of motor vehicles, rather than as a regulation of the "safety of operation and equipment." The legislative history of the Motor Carrier Act of 1935 shows that Congress intended to give the Interstate Commerce Commission authority over the latter but not over the former. An early version of the bill in the Senate conferred on the commission the power to regulate sizes and weights of vehicles, but this power was withdrawn before the bill became law. The power therefore was not given to the commission, and remains in the hands of the states. This result rests upon a statutory construction, and Congress might change it if it so desired.

Third Session of the Seventy-sixth Congress, January 3, 1940, to January 3, 1941, The *sine die*[1] adjournment of Congress on January 3 brought down the curtain on the longest[2] and one of the most hectic and unique sessions in American history. As early as January 3, 1940, when the session began, the leaders of the House and Senate were looking forward to a program involving much controversy. But it is doubtful whether anyone anticipated a session drawn out over 367 days, during which $19,069,548,775 would be appropriated and 941 laws enacted.[3] Many important bills were pending on the Senate and House calendars on the opening day, and measures on trade treaties, labor, agriculture, taxation, and debt limitation were certain to arise. Many congressmen rightly guessed that much defense legislation would be enacted. Around the Capitol during the opening weeks of the session, nevertheless, there was much sentiment for a more nearly balanced budget and for a curtailment of national expenditures. Barrages of criticism were thrown up against a continuation of the extensive executive powers previously conferred on the President, and particularly urging removal of certain governmental regulations on individuals or businesses. Pleas were made for a return to "congressional government."[4] And many members urged an early adjournment in order that representatives and senators might go home for campaign purposes.

Before the close of the session, however, the members of both houses experienced trials which were indeed a strain on the very existence of the American form of government. The President apparently anticipated much trouble ahead and envisaged a continuation, and even an expan-

[1] No concurrent resolution for *sine die* adjournment was adopted. In accordance with the Constitution, Congress died automatically, each house adjourning separately.

[2] The next longest session (65th Congress, 2nd session) ran for a period of 354 days.

[3] The activity of the session was tremendous. The *Congressional Record* ran to 21,846 pages, and committee hearings, unusually extensive, to between 65,000 and 75,000 pages.

[4] Representative Luce, speaking to the House as late as December 16, 1940, stated: " . . . Of supreme importance, under both Republican and Democratic control, has been the steady march toward subordination of the legislative branch of the government. . . . With the World War, the President became, for the time being, supreme. After the war, the Senate reasserted itself. Legislative subordination, however, had become so acceptable to Congress as a whole that it continued to look to the President for leadership. The habit grew, until now almost no important bill is passed upon save upon administrative initiative or with previous approval of the Chief Executive. The effect of this has been to diminish the importance of Congress." *Cong. Rec.*, 76th Cong., 3rd Sess., p. 21513 (hereafter references to the *Record* will give only page numbers).

sion, of executive powers rather than a curtailment of them. In his annual message on the opening day, he urged that the United States should not play the rôle of "an ostrich" in regard to foreign affairs and foreign wars, but "see the possibilities for our children if the rest of the world comes to be dominated by concentrated force alone—even though today we are a very great and a very powerful nation. . . . " Beyond this, he recommended a continuation of the trade agreements program, taxes to provide an increased national defense program, a solution of the unemployment problem, and promotion of national unity.

From January to May, the legislative program consisted mainly of passing the annual routine appropriation measures, most of which were enacted at figures below budget estimates, and all of which, up to that time, passed the House at lower figures. But in May, Europe became an erupting volcano, shaking the earth and affecting the national life and existence of the peoples of the Western hemisphere. Consequently, within the span of less than a month, the legislative picture was wholly changed and all planned economies were thrown to the winds. All other business was temporarily excluded, and the defense program was enacted at record-breaking rapidity.

By the middle of October, the legislative program of the session had been completed, but Congress would not adjourn *sine die*. The leadership made four or five attempts to procure adjournment, but to no avail. Seldom was there a quorum of either house in Washington; but neither was willing to leave the international situation to the President single-handed. During the last three months, the two bodies pursued a program of three-day recesses without transacting any major business.[5]

Organization. The more important changes in congressional leadership during the session took place after the controversial legislation had been disposed of. Most of the legislative measures acted on after May consisted of defense measures on which the membership generally voted as a unit, certainly with little regard for party lines. In November, the Senate elected William H. King president *pro tempore* and Walter F. George chairman of the Foreign Relations Committee, both replacing Key Pittman, who died on November 10, 1940. All told, about 20 other changes were made in standing committee personnel, involving some 13 different committees.

On the House side, Sam Rayburn, who had been floor leader, became speaker of the House about the middle of September, following the death of Speaker Bankhead, and John W. McCormack, who had been fourth ranking majority member of Ways and Means, was promoted to floor

[5] After October 8, very little was done except for disposing of the conference report on the Ramspeck Civil Service Bill (H.R. 960) and Senate action on the Walter-Logan Administrative Court Procedure Bill (H.R. 6324).

leadership. Four changes in committee chairmanships took place,[6] and from 75 to 100 changes in committee personnel were made because of deaths and resignations.

Procedure: General Aspects. Procedure in the House and Senate was much the same as in the first session. Some bills were debated for longer periods of time, while other major measures were disposed of more hurriedly. The Senate and the House debated 80 and 115 bills respectively for three or more pages each of the *Congressional Record.* Eight in the House and 11 in the Senate yielded over 100 pages each. The most debated measure was the Compulsory Military Training Bill (S.4164), filling over 300 pages of the House proceedings and nearly 700 pages of the Senate proceedings. The House broke all precedents in its use of special rules, and the Senate regularly resorted to the practice of limiting debate under unanimous consent.[7] But no important rules were changed, and no significant innovations in procedure were made. The House and Senate were actually in session 201 and 192 calendar days, respectively; but a great number of the sittings of each were not used for transacting legislative business.

Procedure in the Senate. Senate procedure cannot be completely appraised unless attention is called to the legislative abilities and activities of Senator Barkley, floor leader. Mr. Barkley did not wield control over the actions of the Senate quite to the extent of some of his predecessors, but as majority leader he enjoyed much influence and did a good job of directing the legislative program toward granting the requests of the Administration. As evidence of the absolute positiveness with which he talked about what the program was going to be, one of his characteristic statements to the Senate may be noted: "Whether I move that the Senate adjourn or recess may depend on how much time is wasted on extraneous 'bunk' instead of considering the bill which is now before the Senate."[8]

Thus, under his leadership the program for the session, with the exception of a few bills, was pretty much streamlined for speed. Eleven bills were debated for four or more days each. The Extension of the Trade

[6] Fulmer of South Carolina replaced Jones of Texas as chairman of the Committee on Agriculture; Kramer of California, who had been fourth ranking majority member of the Committee on Patents, was promoted to chairmanship of that committee, replacing Sirovich of New York; Cochran of Missouri became chairman of the Committee on Accounts, filling the vacancy created by the resignation of Warren of North Carolina; and O'Leary of New York took over the chairmanship of the Committee on Executive Expenditures, left vacant by Cochran of Missouri resigning that post to become chairman of the Committee on Accounts.

[7] This method of limiting debate in the Senate is more effective than one normally thinks. Requests for such limitation, usually made by the majority floor leader, carry with them the pressure and force of the majority party's organization.

[8] P. 4910.

Treaties program (H.J. Res. 407) for an additional three years and the Extension of the Hatch Act (S.3046) were debated for 10 days each, and the Compulsory Military Training Bill (S.4164) was debated 13. Many important measures and hundreds of minor bills were disposed of after a minimum of consideration. For example: the bill (H.R. 10412) authorizing the appropriation of $150,000,000 for National Defense Housing was passed after a debate filling only three pages of the *Record*, without a roll call vote.[9] The joint resolution providing $338,000,000 for the acquisition of land and for military post construction (H.J. Res. 607) was ordered reported within 15 minutes after it was passed by the House on September 19. The bill passed the Senate on the subsequent day after about five minutes of debate in which three senators took part.[10] On September 27, the Senate passed 98 bills; on September 30, a total of 107; and the high-water mark was reached on April 10, when 157 measures were approved. The speed and looseness with which the leadership shot some bills through was called to the attention of the Senate on several occasions.

As usual, the daily attendance in the Senate was rather small; in the latter part of the session, particularly in campaign-time, it was difficult to obtain a quorum in order to carry on business. In several instances the clerk was forced to call the roll more than once, as well as to call it rather slowly in anticipation of a quorum developing before the call had been completed. The chance of getting a quorum seemed so hopeless on one occasion after 25 minutes of trial that Senator Thomas of Oklahoma, who had made the particular point of no quorum, asked the presiding officer: "Would it be in order for me to ask that the demand for a roll call be vacated, so that we may proceed . . . ?"[11] Finally the senators present adopted a motion to send out the sergeant-at-arms to "request the attendance of absent senators."

One of the most interesting political maneuvers in the Senate during the session to block the consideration of a certain bill was the action of Senator Clark on February 19, when a bill to prohibit the advertising of alcoholic beverages by radio (S.517) was about to be called up. On that day, bills were being called up under unanimous consent, and, without objection, passed. Senator Clark was opposed to the particular bill, and to prohibit the Senate from reaching it on the calendar, had demanded a quorum call on four different occasions, delaying the procedure. Finally when he saw that the bill would otherwise be reached he put an end to it for the remainder of the session by offering the Anti-Lynching Bill as an amendment. He knew this action would start a filibuster.[12]

[9] Pp. 19736–19739. [10] Pp. 18754–18755.

[11] P. 19634. The Vice-President replied: "The Senate can do nothing in a legislative way without a quorum. The want of a quorum has been developed. Therefore, there is nothing for the chair to do except to direct the clerk to call the names of the absent senators." [12] Pp. 2473–2474.

The chair made a rather unusual and interesting ruling during consideration of the Compulsory Military Training Bill. Senator Clark had made a point of order against further proceedings until a quorum was obtained. The presiding officer inquired of Senator Downey, who occupied the floor at the moment, if he would yield to allow Senator Clark to make his motion. Senator Downey stated that he would "prefer not to yield for that purpose." Whereupon Clark replied: "I insist on the constitutional right to have a quorum present when business is transacted. I shall be glad to have the chair rule." The chair ruled: "The chair is advised that the senator from California does not have to yield for the purpose of suggesting the absence of a quorum."

Procedure in the House. No new faces appeared in the group of leaders determining the House program, and procedure was much like that of other recent sessions. Any differences were due primarily to the emergency national defense program. Many bills were considered under general debate from one to five hours each, and then read under the five-minute rule for amendments; a few, like the Compulsory Military Training Bill (H.R. 10132 and S.4164), consumed a whole week. The full consideration of many bills (adoption of a special rule granting the measure the right of way for immediate consideration, general debate, reading for amendments, and voting) extended over a period of from one to three days each; in fact, more bills were thus disposed of in the House than in the Senate. Only a few bills, however, were discussed for more than three days. Nearly nine-tenths of the bills and resolutions passed by the House were called up from one of the special calendars[13] or by unanimous consent and after a few minutes' discussion passed without objection. On July 2, the House passed 133 bills, the highest number on any one day during the year.

During the session, 604 private bills were reported to the House and placed on the Private Calendar. All but 21 of them were disposed of, 390 becoming law. Of the 135 bills and resolutions placed on the House Calendar, seven died there. Of the 565 measures placed on the Union Calendar, 80 died there, including 12 presidential messages and House reports made in pursuance of certain resolutions to that effect. Of the 467 measures placed on the Consent Calendar, 447 were acted on, leaving 20 on the calendar.

Calendar Wednesday was invoked on eight different occasions, with 22 committees called upon. Four committees responded to the call, presenting 10 bills for consideration, of which the House passed eight. The Committee on Public Lands called up six of the bills. The other committees responding to the calls were Post Office and Post Roads, Indian Affairs, and Territories.

[13] The calendars of special business include: Private, Consent, District, Calendar Wednesday, Suspension of the Rules, and the like.

The suspension of the rules procedure was invoked on five suspension days. Eleven bills were called up under this procedure and passed by a two-thirds vote. These, however, do not include bills which might have been passed under suspension of the rules on days other than suspension days.

The discharge rule was rather popular. Seventeen motions to discharge committees from further consideration of certain bills, including bills on old age pensions, pernicious political activities, amendments to the N.L.R.B., coal mine inspection, and poll tax, were filed, but only two received the necessary 218 signatures, both of which were recalled from their respective committees and passed by the House.[14] On the other hand, a few committees administered death blows as far as they were concerned to certain bills by refusing to report the measures out, and the discharge rule was not applied. Five rather significant bills, after public hearings, were tabled by their respective committees. But two of them were finally enacted. One, the T.V.A. Tax Refund Bill, was placed as a "rider" on the Work Relief Appropriation Bill (H. J. Res. 544). The other, the Anti-Pernicious Political Activities Bill, was reconsidered by the Judiciary Committee, voted reported, and later passed.

The House broke all precedents in its use of special rules providing for the immediate consideration of particular bills. It called up and voted on 48 of them as compared with 37 in the second session of the 74th Congress, the next highest number for any one session.[15] In all, 65 resolutions (special rules) providing a particular procedure for the same number of legislative proposals were acted upon. Of the 48 voted on, one was rejected,[15] 15 were laid on the table because the bills for whose consideration they provided were disposed of under some other procedure; and two were left pending on the Calendar at the end of the session.

An analysis of the special rules shows that of the 48 all but three provided for the immediate consideration of certain bills, of which 35 were merely open rules giving otherwise unprivileged bills the right of way for a hearing in the House. Thirteen of them were closed rules. All but three specified a maximum time for general debate of the particular bill (varying from one hour to two days), which was to be equally divided and controlled by those favoring the bill and those opposing it. In all but five instances, the rules provided that the respective bills be read under the five-minute rule for amendments, immediately following the general debate, and that thereupon the committee rise and report the bill to the House, with "such amendments as may have been adopted." At that point the previous question was to be considered "as having been ordered" on the bill.

[14] See H.R. 801, Anti-Lynching Bill, and H.R. 9000, Veterans' Pension Bill. Neither became law.

[15] For further details, see this REVIEW, Vol. 33, p. 1038.

An investigation of the outcome of the various bills considered under special rules shows that only 29 of the 48 were enacted into law, four being defeated in the House, three being vetoed, three being left in conference committees, eight having passed the House only; and one resolution was voted down without even giving the bill for which the rule provided consideration a hearing.

These findings are conclusive that the Rules Committee is not used solely as an agent of the party to grant prior consideration to legislation of the Administration and of the party. A study of the closed rules, however, will disclose that they are granted only to protect majority party and Administration measures.

Significant also is the fact that whether or not a measure is highly privileged for immediate consideration or called up under a special rule, the time when the bill will be considered is determined by the House leadership. What the program on any day shall include depends on what the leadership decides. To illustrate: House Resolution 443, a special rule providing for the immediate consideration of S.326 (the Mexican Claims Bill) was adopted by the House on May 15 by a vote of 210 ayes to 96 noes. But the bill, which was a privileged question ready for consideration immediately after agreement to the resolution, was not given any further consideration until July 8, almost two months later.

Legislative Activity. Of the grand total of 941 private and public laws and resolutions enacted, 494 were public acts, 387 private acts, 57 public resolutions, and 3 private resolutions.[16] The President vetoed 107 bills and six died in conference. Significant is the fact that a great amount of the time of both houses was devoted to the consideration of bills which were never enacted.

Most of the bills to become law went through both houses predominantly as reported by the respective committees. Nearly all major bills, however, were amended in some way in one of the two houses. And it must be emphasized that some rather fundamental amendments were made in certain bills in opposition to the recommendations of the particular committees concerned. Usually more major amendments were offered to the important bills by the Senate than by the House.

[16] Each house played a more important rôle in legislative activity than the above figures show. The House actually passed 1,127 measures, as follows: 714 House bills, 356 Senate bills, 33 House joint resolutions, and 24 Senate joint resolutions. During the session, 3,713 bills and resolutions were introduced in the House. Of that number, 3,107 were House bills, 227 House joint resolutions, 58 House concurrent resolutions, and 321 House resolutions. House committees made 1,471 reports. The Senate actually passed 1,100 measures, as follows: 405 Senate bills, 619 House bills, 38 Senate joint resolutions, and 38 House joint resolutions. During the session, 1,709 bills and resolutions were introduced in the Senate. Of that number, 1,420 were Senate bills, 118 Senate joint resolutions, 25 Senate concurrent resolutions, and 146 Senate resolutions. Senate committees made 1,154 reports.

A considerable number of amendments offered by members on their individual responsibility were retained in the bills straight through to enactment; many others were lost along the way. Thus on the House side, the so-called Fish Amendment (providing for voluntary enlistment) to the Compulsory Military Training Bill (S.4164), adopted in the House by a fairly close vote, was lost in conference. On the Senate side, the so-called LaFollette amendment (on excess profits) to the Bill Providing Revenue for National Defense (H.R. 10039) was adopted by the Senate against the wishes of the Senate Finance Committee, but was later stricken out by the conference committee. The most controversial piece of legislation—to which a great number of amendments were offered and not one adopted—was the joint resolution (H.J.Res. 407) extending the trade treaties program for another three years. In the House alone, 22 amendments were offered and rejected.

(1) *Appropriations.* In spite of the fight at the outset to keep expenditures down, the appropriations for the third session, according to Representative Taylor, chairman of the House Appropriations Committee, totaled $19,069,548,775 of direct appropriations and $4,066,191,860 of contract authorizations, making a grand total of $23,135,740,635, which was $641,519,461 in excess of the formally presented budget estimates.[17] The only earlier session in which appropriations were made in excess of those of this last year was the second session of the 65th Congress (war-time Congress, November, 1917-December, 1918). In that year, appropriations totaled $36,119,536,082.

According to a report issued by Mr. Taylor, $13,106,227,930, or 56.6 per cent of the total amount chargeable to general revenues, was allocated for national defense and enforcement of neutrality, and $10,029,512,705, or 43.3 per cent to all other functions of the government. Of the total amount for national defense purposes, the Army and Navy were allotted $8,782,145,145 and $3,537,138,137, respectively, and $776,944,468 was assigned for civil activities contributing to national defense and enforcement of neutrality.

Most of the 24 appropriation bills enacted were passed by each of the chambers at figures much the same as reported by the respective appropriation committees. The bills passed the House at a grand total of $13,316,361,946, which is only $149,858,852 above the sum total of the

[17] After the annual budget message was submitted in January, the President sent to the House and Senate 175 and 74 communications, respectively, submitting additional supplementary estimates. These estimates totaled approximately as much as the amount of the original budget estimates (pp. 20719–20724). For a complete breakdown of the appropriations, see *Appropriations Budget Estimates, etc.*, 76th Congress, Second and Third Sessions, by Marcellus C. Sheild, clerk of House Committee on Appropriations, and Everard H. Smith, clerk of Senate Committee on Appropriations, pp. 1–1212.

bills as reported to the House. The bills passed the Senate at a grand total of $15,040,546,542, which is $291,026,615 above the sum total of the bills as reported to the Senate. Of the 24 bills, 15 in the House and 10 in the Senate were passed at the identical figures reported. Of particular importance is the fact that the Senate committee was much more liberal than the House committee. The House committee reported the bills at a total of $13,166,503,094, while the Senate committee reported the same bills at $14,749,519,927, or at an increase of $1,583,016,833. The decisions of the conference committees on the various bills were such that the total amounts finally enacted were larger than the total sums passed in either of the two chambers.

Some significant actions on the appropriation bills merit mention here. The Relief Appropriation Bill, which has been giving Congress plenty of trouble each of the last few years, this time stirred little opposition, notwithstanding the huge outlays contemplated therein. The bill was passed at a figure above the budget estimate, namely, at $1,157,000,000, while the estimates totaled only $1,112,000,000. Perhaps the main reason why these huge expenditures went almost unchallenged was that a large share of the funds was allocated to defense projects.

Many provisions of the Agricultural Appropriation Bill (H.R. 8202) were unusually controversial, including the $212,000,000 stipulation for parity payments, the Jones amendment providing $25,000,000 for Farm Tenancy, and the $85,000,000 provision for the food stamp program. The votes on the various agricultural appropriations disclosed divisions with little regard for party lines but based on urban interests against rural interests. Even the rural groups, representing the various parts of the country, sometimes could not see eye to eye as to what the provisions should contain.

The Labor-Social Security Bill (H.R. 9007) was the source of much trouble. The appropriation for the Wage and Hours Division was cut considerably by the House, but the Senate committee restored the decrease. The Research Division of the N.L.R.B., headed by David Saposs, was deprived of any funds for the fiscal year 1941, but the Board ignored the recommendations of Congress by transferring the work of that division to a Technical Division and assigning Mr. Saposs along with it. This was too much for the House, which at a later date inserted in the Civil Functions Appropriation Bill a proviso that "none of the appropriation 'Salaries, National Labor Relations Board, 1941' shall be obligated for the Division of Economic Research or for the Division of Technical Service." Other amendments to this bill over which there was considerable discussion were the Scrugham-Leavy Amendment, increasing C.C.C. funds by $50,000,000, and the Collins-Johnson amendment, increasing

N.Y.A. funds to $97,085,000. Both of these amendments were approved by large majorities.

(2) *General Legislation:* (1) *Export-Import Bank:* Two bills were enacted increasing the lending authority of the Export-Import Bank.[18] The first one authorized an increase in the lending authority of the bank from $100,000,000 to $200,000,000, purposely to make loans to Finland available during the time of her struggle with Russia. The measure passed in the Senate by 49 yeas (Dem. 38, Rep. 9, Others 2), 27 nays (Dem. 16, Rep. 9, Others 2);[19] no roll call vote was taken in the House. The second act increased the lending authority of the bank from $200,000,000 to $500,000,000 for assisting in the development "of the resources, the stabilization of the economies, and the orderly marketing of the products of the countries of the Western Hemisphere."[20]

(2) *National Defense Legislation.* This legislation, comprising a major portion of the legislative program of the session, was disposed of at record-breaking speed, in the absence of clearly drawn party lines. All of the bills originated with the Administration or were closely supervised by Army and Navy officials at each step through Congress. This, however, does not mean that Congress passed every bill sent to it; nor does it mean that Congress made no changes in such of the bills as it enacted.

The political line-ups to act on the various legislative and appropriation defense measures were streamlined and unified as opposed to the traditional two-party system of legislating. The Senate passed several of the major measures without a dissenting vote, and most of them passed with little opposition. In the House, roll-call votes on two of the important defense issues showed only Representative Marcantonio, a member of the American Labor party, voicing a protest, and most of the bills were passed "without objections." In fact, most of the defense issues were disposed of by both houses so rapidly and with so little opposition that the procedure on them became monotonously dull. Occasional protests were heard accusing the leadership of trying to pass legislation which was not strictly defense by labeling it "National Defense Legislation."

The major defense bills, enacted after a minimum of consideration (with the exception of the Compulsory Military Training Bill, which holds the distinction of being the most debated bill for many a session) include: the Naval Expansion Bill, authorizing an increase in the under-age naval vessels by 167,000 tons; the Naval Air-fleet Measure, increasing the air-fleet not to exceed 10,000 planes, together with training for 16,000 naval aviators, and for acquiring aviation facilities; the Naval Reorganization Bill, abolishing the Bureaus of Construction and Repair and Engineering

[18] See S.3069 (P.L. 420) and H.R. 10361 (P.L. 792).
[19] P. 2171. [20] H.R. 10361 (P.L. 792).

and consolidating them under a Bureau of Ships; the bill to Expedite Naval Shipbuilding, a comprehensive measure relaxing limitations on ship construction and initiating speedier action; the bill Expediting National Defense, giving the "go ahead sign" to the Secretary of War to build up the military forces; the Aircraft Procurement Law; the bill expanding R.F.C. loan authority to finance businesses participating in the production of national defense items; the bill authorizing the President to requisition export articles or materials forbidden by the Export Control Administration; and the Soldiers and Sailors Relief Act, preventing insurance policies of service men from lapsing and to stay other payments during compulsory training periods.[21] The Compulsory Military Training Bill[22] and the resolution authorizing the President to call out the National Guard will be mentioned here separately. The debate on the Compulsory Military Training Bill consumed 302 pages of the *Congressional Record* in the House and 665 in the Senate. There was quite a fight over the Fish amendment providing trial of voluntary enlistment on a sixty-day basis. It was adopted in the House by 207 yeas (Dem. 63, Rep. 140, Others 4), 200 nays (Dem. 178, Rep. 22, Others 0), but it was stricken out in conference.[23] The age limits for induction presented an issue for much conflict. A number of amendments on various ranges of ages were voted on. The Senate finally agreed on setting the age limits at twenty-one to thirty-one. The House set its age limits at twenty-one to forty-five. In conference, the ages of twenty-one to thirty-five were agreed upon; and these were finally enacted into law. The conscription of wealth amendments were highly controversial. The bill passed in the House by 263 yeas (Dem. 212, Rep. 51), 149 nays (Dem. 33, Rep. 112, Others 4), and the Senate by 58 yeas (Dem. 50, Rep. 8), 31 nays (Dem. 16, Rep. 11, Others 4). The conference report was adopted in each chamber by almost identical party divisions.

The bill authorizing the President to call into active service members and units of the Reserve Components and Retired Personnel of the Regular Army was also given considerable attention.[24] The major points at issue included the questions of giving members of the Guard a definite time in which to resign before the call into active service would apply and of confining the use of the Guard to the United States instead of the Western Hemisphere.[25] The bill passed the Senate by 71 yeas (Dem. 49, Rep. 20, Others 2), 7 nays (Dem. 4, Rep. 2, Others 1),[26] and the House by 343 yeas (Dem. 214, Rep. 126, Others 3), 33 nays (Dem. 4, Rep. 28, Others 1).[27]

[21] S. 4270 (P.L. 861). [22] S. 4164 (P.L. 783).
[23] Pp. 17791–17792. [24] S. J. Res. 286 (P. Res. 96).
[25] An amendment placing such a limitation was defeated in the Senate by 38 yeas (Dem. 22, Rep. 13, Others 3), 39 nays (Dem. 30, Rep. 9, Others 0). P. 15410.
[26] P. 15412. [27] P. 15943.

(3) *Pernicious Political Activities Act* (Hatch Act). Next to the Compulsory Military Training Bill, the Hatch Bill was the most discussed measure of the session. The act provides for a general extension of the Anti-Pernicious Political Activities Law enacted in the first session of the same Congress to include all employees paid in whole or in part with federal monies, to limit campaign contributions of individuals, and to extend the application of civil service rules regulating political activities to state employees paid from federal funds.

The bill was debated in the Senate for ten days (filling some 304 pages of the *Congressional Record*), during which time 17 roll-call votes on amendments and one on the passage of the bill were taken. The Brown amendment, including within the terms of the act employees of certain corporations, was rejected by 31 yeas (Dem. 30, Others 1), 53 nays (Dem. 30, Rep. 20, Others 3); the Bankhead amendment limiting campaign contributions by any one person to $5,000 was adopted by 40 yeas (Dem. 36, Rep. 1, Others 3), 38 nays (Dem. 19, Rep. 18, Others 1); and the Hatch amendment applying the civil service rules on political activity to state employees was agreed to by 42 yeas (Dem. 21, Rep. 20, Others 1), 34 nays (Dem. 33, Others 1). The bill passed by 58 yeas (Dem. 34, Rep. 22, Others 2), 28 nays (Dem. 27, Others 1).

The House held up the bill for almost three months. Having been referred to the Judiciary Committee on March 19, it was tabled on May 1 by a vote of 14 to 10. But the public would not let the case rest. After much agitation, the committee decided upon reconsideration, and on May 29 voted (16 to 8) to report the bill in a redrafted form. The measure was called up in the House under a special rule; and after two days' consideration, it was passed by 243 yeas (Dem. 89, Rep. 152, Others 2), 122 nays (Dem. 120, Rep. 1, Others 1). The House amendments were adopted by the Senate without sending the bill to conference.

(4) *Reorganization Plans:* Three Reorganization Plans (III, IV, V),[28] in pursuance of the Reorganization Act of 1939, were submitted to Congress by the President. Plan III affected the Treasury, Interior, Agriculture, and Labor Departments and the Civil Aëronautics Authority. Plan IV made changes of an interdepartmental character affecting the Departments of State, Treasury, Justice, Post Office, Agriculture, Commerce, and Interior, together with the Maritime Commission, the Civil Aëronautics Authority, and the Federal Security Agency. The C.A.A. and the Weather Bureau were transferred to the Department of Commerce. Plan V transferred the Immigration and Naturalization Service from the Department of Labor to the Department of Justice.

The House passed a resolution (H. Con. Res. 60) to kill Plan IV by 232

[28] Plan III was submitted on April 2, Plan IV on April 11, and Plan V on May 22.

yeas (Dem. 77, Rep. 153, Others 2), 153 nays (Dem. 151, Others 2). The Senate rejected the resolution by 34 yeas (Dem. 12, Rep. 20, Others 2), 46 nays (Dem. 44, Others 2). Thus in accordance with the provisions of the Reorganization Act of 1939 the plan was scheduled to go into effect in 60 days.[29] All three of the Plans, however, were put into effect ahead of schedule by Congress passing H. J. Res. 551, making Reorganization Plan V effective in ten days[30] and Plans III and IV on June 30.

(5) *Taxes.* In the first part of the session, it appeared that there would be no tax legislation at all; but before the end two general tax measures were enacted to aid in defraying the extraordinary costs of national defense preparedness. The first bill, National Defense Tax Bill (H.R. 10039), as introduced, provided for an increase in the debt limit and for taxes on distilled spirits, cigarettes, a general increase of 10 per cent on all levies, including excess profits, capital stock, estate, and gift taxes, together with an increase of surtax rates. The bill was enacted pretty much as introduced, several minor changes having been made. It passed under a closure rule in the House by 396 yeas (Dem. 241, Rep. 152, Others 3), 6 nays (Dem. 0, Rep. 5, Others 1).

The Senate made several changes, including addition of the LaFollette amendment levying excess profits taxes on corporations and the Connally amendment providing for a war profits tax. The bill passed by 75 yeas (Dem. 61, Rep. 11, Others 3), 5 nays (Rep. 4, Others 1). In conference, both the LaFollette amendment and the Connally amendment were stricken out in spite of the fact that they had been adopted in the Senate by 41 yeas (Dem. 29, Rep. 8, Others 4), 31 nays (Dem. 23, Rep. 8) and 51 yeas (Dem. 43, Rep. 4, Others 4), 28 nays (Dem. 17, Rep. 11), respectively.

The second bill, the Excess Profits Tax (H.R. 10413), was devised to meet a three-fold purpose: to levy on excess profits, to suspend the Vinson-Trammel Profits Limitation Act, and to provide an amortization tax exemption scheme, aimed more at relieving industry than at raising revenue. The bill was very technical, and the House passed it without offering an amendment or taking a roll-call vote.The Senate made a few changes in the bill and passed it by 46 yeas (Dem. 45, Rep. 1), 22 nays (Dem. 5, Rep. 16, Others 1). But the measure was criticized severely by some senators, particularly LaFollette and Vandenberg.

In the Senate, the Brown amendment to the bill, taxing government bonds and other securities, was rejected, after a long and heated debate, by 30 yeas (Dem. 19, Rep. 8, Others 3), 44 nays (Dem. 34, Rep. 10).[31] The

[29] The law requires a positive disapproval by both houses in order to defeat a reorganization proposal by the President.

[30] The resolution was approved on June 4, making Plan V effective June 14.

[31] P. 18621. There has been considerable agitation in Congress during the last few years for a tax on government securities. In the 75th Congress, the Senate adopted a resolution (S. Res. 303) setting up a special committee on the taxation

LaFollette amendment, offered as a substitute for the excess profits tax provision of the bill (adopted by the Senate in the first tax bill), was rejected by 20 yeas (Dem. 10, Rep. 8, Others 2), 41 nays (Dem. 34, Rep. 7, Others 0).[32] Senator LaFollette urged adoption of his amendment on the ground that it was "purely and simply an excess-profits tax" and involved only 20 printed pages as opposed to the 60 pages of the committee's provision. The conference report was adopted in both houses without roll-call votes.

(6) *T.V.A. Legislation.* The bill providing for the payment of certain sums by the Tennessee Valley Authority to state and local governments in the T.V.A. area to replace taxes lost to the communities in which properties were taken over by the federal government had a stormy legislative voyage. The Senate finally had to resort to tacking the bill on a House bill as a "rider" in order to get it enacted—the same procedure that it had used in the first session of the 76th Congress to procure enactment of the T.V.A. Bond Issuance Act of 1939. The House Military Affairs Committee, however, had tabled the bill before the Senate took that action, a last resort to get the issue before the House for a vote. Consequently, the Senate added the bill as an amendment to H.J.Res. 544 (Work Relief Appropriation Bill) on June 12, without a roll-call vote, and it then went before the House as a part of that conference report. The House thereupon adopted the amendment by 205 yeas (Dem. 193, Rep. 8, Others 4), 178 nays (Dem. 141, Rep. 37).[33]

(7) *Trade Treaties.* The bill continuing the trade treaties program for an additional three years was fought in both houses on partisan and sectional bases, and enacted after four months of continuous consideration without an amendment.[34] The Senate rejected several amendments by close margins and with little regard for party lines as far as the Democrats were concerned. In fact, several amendments to prevent presidential encroachment on the Senate's treaty-making power were offered, debated, and defeated by very small margins. For example, the Pittman amendment for Senate ratification of all trade agreements, debated for four days, was re-

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of government securities and salaries (see Senate Report 2140 of 76th Congress). The report of that committee recommended the taxation of government securities, being signed by Senators Brown, Byrd, Miller, Burke, and Townsend.

[32] P. 18445. The Finance Committee rejected the amendment by 17 to 3.

[33] Pp. 13271–13272. When the amendment was pending before the House, Representative May, chairman of the House Military Affairs Committee, stated: "I am here today defending the jurisdiction and rights of a major committee of this House against the overriding and roundabout way of telling the House of Representatives that its committee cannot write legislation after six or eight weeks of hearings, and then after many hours and weeks of consideration in executive session."

[34] See H.J.Res. 407 (P.Res. 61).

jected by 41 yeas (Dem. 18, Rep. 21, Others 2), 44 nays (Dem. 43, Others 1). The O'Mahoney amendment for congressional approval of trade treaties was defeated by 38 yeas (Dem. 15, Rep. 20, Others 3), 44 nays (Dem. 43, Others 1).

Public hearings on the bill by the standing committees of both bodies were extensive and involved many pages of testimony. The Ways and Means Committee held public hearings for 20 days, yielding 2893 pages of testimony, and the Finance Committee held hearings for nine days, yielding 867 pages. The bill was debated and passed in the House in one day. Twenty-two amendments were offered, but every one was voted down, some on the basis of sectionalism as much as on party lines. The measure passed the House by 216 yeas (Dem. 210, Rep. 5, Others 1), 168 nays (Dem. 20, Rep. 146, Others 2). The Senate passed the bill by 42 yeas (Dem. 41, Rep. 1), 37 nays (Dem. 15, Rep. 20, Others 2).

(8) *Transportation.* The Transportation Act of 1940 was passed by both houses during the first session of the 76th Congress and sent to conference, where it was lodged when the session adjourned *sine die*. On April 26, 1940, the conferees made a report on the bill; but it was recommitted by the House, on May 9, by 209 yeas (Dem. 161, Rep. 44, Others 4), 182 nays (Dem. 71, Rep. 111), with recommendation that the conferees insist on (1) the Jones amendment for reduced freight rates on farm products, (2) the Wadsworth amendment permitting all kinds of carriers to cut rates so long as they should get a compensatory return "after taking into consideration overhead and all other elements entering into the cost . . . for the service rendered," and (3) the original House provisions relating to combinations known as the Harrington amendment, with one modification to protect "railroad employees affected."

After much alteration of the measure, the conferees agreed to make a second report on August 7. The Wadsworth amendment prohibiting rates below the cost of production was eliminated. The Harrington amendment relating to employees affected by rail consolidations was revised. Under the revision, railroads would be required to pay a dismissal wage or maintain employees affected by a consolidation for a period of four years. The Jones amendment was revised in such a manner as to give the same preference to farm products as was given to manufactured goods.

Points of order were raised against the report in both houses on the ground that the conferees had gone beyond their jurisdiction in including material not in either bill and striking out provisions included in both bills. The points of order were overruled, and the House agreed to the report on August 12 by 246 yeas (Dem. 122, Rep. 123, Others 1), 74 nays (Dem. 55, Rep. 17, Others 2). The Senate adopted the report by 59 yeas (Dem. 43, Rep. 15, Others 1), 15 nays (Dem. 11, Rep. 3, Others 1). These divisions show signs of coastal representatives and senators voting against, and inland members voting for, the report.

(9) *Miscellaneous.* In addition to the above mentioned bills, a great number of other important measures were enacted which of necessity will be discussed here very briefly. Some 20 minor laws on various phases of agriculture and forestry were passed. Agricultural measures which were given the most consideration, however, failed of enactment. Perhaps the most important ones passed are the bill to extend the sugar quota system and taxes on sugar for another year (H.R. 9654) and the bill increasing the credit resources of the Commodity Credit Corporation (S. 3998). The vote on passage of the latter in the House showed definite signs of an agricultural *bloc,* together with solid Democratic support—247 yeas (Dem. 209, Rep. 34, Others 4), 106 nays (Rep.). The Boulder Dam Rates Bill passed each house without much opposition and rather quickly, once it had been reported out of the House Committee on Irrigation and Reclamation. The Census and Reapportionment Bill, continuing the existing law on the reapportionment of representatives, was passed in both houses without a roll-call vote. The Federal Highway Bill was given rather exhaustive consideration in the House Committee on Roads, and both bodies passed the measure after hardly any discussion. The legislation on control of foreign exchange was enacted very hurriedly and without much discussion. The act provides control over foreign-exchange operations, transfers of credit, and the like during the time of the war in order that the financial structure of the country may be properly safeguarded and assistance prevented from being given an enemy country.

Worthy of mention is the passage of the act to prohibit subversive activities, to amend certain provisions of the law with respect to the admission and deportation of aliens, and to require finger-printing and registration of aliens. This measure passed the House in the first session, but the Senate did not give it serious consideration until after the defense program was well under way. The most discussed private bill of the session was the one to deport Harry Bridges (H.R. 9766). It was passed in the House by 330 yeas (Dem. 180, Rep. 147, Others 3), 42 nays (Dem. 37, Rep. 4, Others 1). The Senate Committee reported the bill, but it died on the Senate Calendar. The major select committees of the House and Senate created or continued during the session for the purpose of making certain investigations include: the T.N.E.C., the Dies committee on un-American activities, the Smith committee on the N.L.R.B., the Wheeler committee on control exercised by foreign organizations over certain aspects of the defense program, and the committee to study small business needs. One rivers and harbors bill was vetoed, but another was drafted and enacted, involving twenty-three projects and appropriating up to $35,622,000. The Wool Labeling Bill (S.162), better known as the "Truth in Fabric Bill," was enacted to "protect producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted, or otherwise manufactured wool products." Finally,

a bill to regulate investment companies, a long and technical bill, was passed by both houses in less than half an hour.

(10) *Bills Failing of Enactment.* Much of the time of the session was devoted to the consideration of bills which were not finally enacted. The Administrative Court Procedure Bill (H.R. 6324), designed to curb certain administrative powers until sanctioned by the courts,[35] after much delay and manipulation, was passed by both houses, but vetoed by the President. It passed the House by 282 yeas (Dem. 130, Rep. 150, Others 2), 97 nays (Dem. 93, Rep. 2, Others 2), and the Senate by 27 yeas (Dem. 10, Rep. 16, Others 1), 25 nays (Dem.). The House refused to override the President's veto by 153 yeas (Dem. 39, Rep. 114), 127 nays (Dem. 123, Rep. 2, Others 2). The Anti-Lynching Bill (H.R. 801) was discharged from the Rules Committee in the House and passed by 252 yeas (Dem. 110, Rep. 139, Others 3), 131 nays (Dem. 122, Rep. 9). The Senate Judiciary Committee reported the bill, but it died on the Senate Calendar without further consideration. The bill to extend the Federal Insurance Act to include cotton was passed by both houses, but vetoed. The Foreign Silver Purchase Act (S. 785) was debated in the Senate for five days and finally passed by a vote of 45 yeas (Dem. 23, Rep. 19, Others 3), 36 nays (Dem. 34, Rep. 1, Others 1). The bill was messaged to the House, where it remained on the Speaker's table from May 10 until June 17, at which time it was referred to the Ways and Means Committee. It is interesting to note, however, that the House referred the bill the day before the measure was offered as an amendment in the Senate to the National Defense Tax Bill (H.R. 10039). In an attempt to get the House to act on the bill, the Senate Finance Committee reported the measure, which the Senate had already passed, as an amendment to the tax bill by a vote of 14 to 6; but the Senate, after the House referred the bill to the Ways and Means Committee, voted down the amendment by 46 nays (Dem. 45, Others 1), 35 yeas (Dem. 14, Rep. 18, Others 3). The measure then died in the House committee without further consideration.

Several pieces of labor legislation were acted on but lost along the way. The Senate passed the Oppressive Labor Practices Bill by 47 yeas (Dem. 37, Rep. 7, Others 3), 20 nays (Dem. 14, Rep. 6). It was immediately messaged to the House and referred to the Committee on Labor, where it was permitted to die without public hearings. A much-amended Wages and Hours Bill was defeated in the House when the bill was recommitted to the Labor Committee by 205 yeas (Dem. 122, Rep. 79, Others 4), 175 nays (Dem. 104, Rep. 71). This vote discloses a division based on industry against agriculture, with some signs of sectionalism. A bill to amend the

[35] The bill provided a uniform procedure for all federal administrative agencies, not otherwise exempt, and for a standard review of the orders and decisions of such agencies. A number of agencies were exempted.

N.L.R.B. Act by changing the board and placing certain restrictions on it, together with redefining policy, passed the House by 258 yeas (Dem. 117, Rep. 141), 129 nays (Dem. 112, Rep. 14, Others 3). The bill was messaged to the Senate and referred to the Committee on Education and Labor, where it remained. A Federal Mine Inspection Bill passed the Senate on January 18, after a very brief debate, but died in the House Mines and Mining Committee.

The Senate as a Council. The Senate as a council had a busy routine program. Little opposition was voiced against any of the nominations, and the treaties acted on were not controversial. The Senate ratified thirteen treaties without amendments or reservations, returned two to the President, and left three pending on the Executive Calendar. No one of the thirteen treaties was controversial enough to necessitate a roll-call vote. The Senate received 17,732 nominations for confirmation, as compared with 13,340 in 1939 and 14,998 in 1935. Of the number, 17,680 were confirmed, 11 rejected, eight withdrawn, and the others were not acted on. Some of the more notable nominations of the session (all approved) included Frank Murphy to the Supreme Court, Frank Knox as Secretary of Navy, Henry L. Stimson as Secretary of War, Lindsay Warren as Comptroller-General, Robert Jackson as Attorney-General, Albert G. Black as Governor of the Farm Credit Administration, Harry A. Millis to the National Labor Relations Board, John J. Dempsey to the Maritime Commission, and Clarence A. Dykstra as Director of Selective Service.[36] The most discussed appointments were those of Stimson and Knox, both Republicans, to membership in the President's cabinet. The nomination of Stimson was agreed to by 56 yeas (Dem. 45, Rep. 10, Others 1), 28 nays (Dem. 14, Rep. 12, Others 2). The nomination of Knox was confirmed by 66 yeas, 16 nays. Hearings on the nomination of Thad Brown to the Federal Communications Commission were held by the Senate Committee on Interstate Com-

[36] See *Civilian Nominations*, Printed for the use of the Secretary of the Senate (Government Printing Office, 1941). The following table of nominations, prepared by Lewis W. Bailey, Executive Clerk, is of interest:

Session and Congress	Postmasters	Army	Navy	Marine Corps	Other civilians	Totals by sessions
Extra session 73d, Mar. 4 to 6, 1933	None	None	None	None	16	16
1st sess. 73d, Mar. 9 to June 16, 1933	None	519	431	34	272	1,256
2d sess. 73d, Jan. 3 to June 18, 1934	4,753	1,310	1,139	126	494	7,822
1st sess. 74th, Jan. 3 to Aug. 26, 1935	5,115	6,714	1,958	564	647	14,998
2d sess. 74th, Jan. 3 to June 20, 1936	3,975	1,744	849	148	773	7,489
1st sess. 75th, Jan. 5 to Aug. 21, 1937	1,297	2,287	2,929	419	769	7,701
2d sess. 75th, Nov. 15 to Dec. 21, 1937	351	516	325	32	161	1,385
3d sess. 75th, Jan. 3 to June 16, 1938	3,439	1,249	856	70	630	6,244
1st sess. 76th, Jan. 3 to Aug. 5, 1939	3,916	2,910	3,025	652	838	11,341
2d sess. 76th, Sept. 21 to Nov. 3, 1939	None	None	None	None	None	None
3d sess. 76th, Jan. 3, 1940, to Jan. 3, 1941	6,222	7,350	2,680	435	1,045	17,732
Totals of each classification Mar. 4, 1933, to Jan. 2, 1941	29,068	24,599	14,192	2,480	5,645	
Grand total of all nominations received—Mar. 4, 1933 to Jan. 3, 1941						75,984

merce for 13 days, furnishing over 686 printed pages of testimony. In the end, the nomination was withdrawn.

The President and Congress. The relationships between the Administration and Congress were much like those in the last few sessions. Under the well-known leadership of the Roosevelt Administration, almost all of the major legislation was drafted in or recommended by the Administration itself. With occasional exceptions, Congress did little more than look into, slightly amend, or block the bills upon which it was called to act. The third Supplemental National Defense Appropriation Bill, appropriating nearly one and one-half billion dollars in accordance with requests of the President and War Department, was passed in the Senate after less than ten minutes of debate, with two senators participating. Not one question was raised as to the total amount for which the bill provided, and, judging by the remarks made, it is doubtful whether ten senators actually knew the amount of money involved; certainly they did not know for what purposes the money was going to be spent. The House debated the measure for only 32 pages of the *Record*, and not one amendment of any significance was offered.

With respect to appropriations, the budget estimates, plus 250 supplemental estimates forwarded from time to time to Congress by the President, determined government expenditures for the fiscal year 1941. Congress did curtail certain estimates and increase others; but, all told, the appropriations, totaling over $19,000,000,000, differed from the budget estimates by only $650,000,000.

The two general tax bills were drafted under the supervision of the Ways and Means Committee and altered by the Senate Finance Committee. But Treasury officials worked closely with both committees and followed the bills all the way through Congress. Compromises were made, but the shadows of the Administration were frequently visible in the determination of what principles and policies should be included in the two measures.

Sentiment in Congress in favor of altering the New Deal trade agreements program was squelched by Administration pressure. When the resolution extending the program for three years[37] was up for consideration, numerous amendments were offered in both chambers aimed at curbing executive powers. But the resolution was finally enacted in the form desired by the Administration. Some of the amendments were rejected by margins of only one or two votes.

The House made unsuccessful attempts to override four different vetoes of the President. On each occasion, a large majority went on record against the President's action, but the necessary two-thirds majority was not forthcoming.

[37] See H.J.Res. 407.

The vote to override the veto of the Pocket Veto Bill[38] showed 184 yeas (Dem. 65, Rep. 117, Others 2), 106 nays (Dem. 103, Rep. 2, Others 1). The veto of the bill directing payment to the state of Ohio for old-age assistance for October, 1938,[39] was sustained by 171 yeas (Dem. 38, Rep. 133), 152 nays (Dem. 150, Others 2). The attempt to override the veto of the bill relating to bandmasters in the regular army, failed by 197 yeas (Dem. 75, Rep. 80, Others 2), 114 nays (Dem. 113, Rep. 1). The veto of the bill granting increases in invalid pensions to widows was sustained by 217 yeas (Dem. 74, Rep. 139, Others 4), 142 nays (Dem. 132, Rep. 10).

The President vetoed 107 bills, but the Administration did not have its way on every count, and much opposition was expressed against it. Definite action was taken several times by either the House or the Senate to show disapproval of the Administrative leadership. The President's veto was overridden twice, once on a general bridge bill and again on a veterans pension bill. The House rejected one of the President's Reorganization Plans (No. IV), although it was not defeated, since under the Reorganization Act of 1939 both houses are required to take affirmative action against a plan in order to prevent it from going into effect. A second Rivers and Harbors Bill, to replace the one vetoed by the President, was drafted and enacted.

The General Bridge Bill was passed over the President's veto in the House by 324 yeas (Dem. 181, Rep. 140, Others 3), 68 nays (Dem. 67, Others 1), and in the Senate by 65 yeas (Dem. 46, Rep. 17, Others 2), 17 nays (Dem. 15, Others 2). The veto of the Relief of Officers and Soldiers of Volunteer Service in Spanish American War and Philippine Island Service was overridden in the House by 274 yeas (Dem. 148, Rep. 122, Others 4), 82 nays (Dem. 61, Rep. 21), and in the Senate by 76 yeas (Dem. 53, Rep. 20, Others 3), 3 nays (Dem.). The House passed the bill on Intervention of States in Certain Law Suits over the President's veto by 253 yeas (Dem. 127, Rep. 124, Others 2), 46 nays (Dem.). In the Senate, the bill was referred to the Judiciary Committee on August 6, where it remained during the rest of the session without consideration.

FLOYD M. RIDDICK.

Washington, D. C.

[38] H.R. 3233.
[39] See H.R. 5118.

PUBLIC ADMINISTRATION

Political Science and Federal Employment.* Only since 1939 have political scientists, as such, had much chance to gain entrance into the permanent federal civil service. This opportunity came as the result of two well-timed phenomena: (1) the demand of a number of federal agencies for young men and women educated in certain branches of political science, and (2) the United States Civil Service Commission's announcement of the Junior Professional Assistant examination, which included an optional called "Junior Administrative Technician." This combination of happy circumstances, however, did not solve all the problems of the young political scientist or clarify all the requirements for federal employment; so, at the 1939 meeting of the American Political Science Association a committee was appointed to study the question.

Reasons for Appointing a Committee. Specifically, the Committee on the Civil Service was charged with inquiring into the alleged omission of political science from the professions listed in the Civil Service Commission's 1940 announcement of the Junior Professional Assistant examination. The committee was charged also with investigating general employment opportunities for political scientists in the federal civil service, with special reference to recent graduates.

Factual History. Before going further, a setting is perhaps necessary. There have been two types of examinations that admitted political scientists—those on the clerical level, beginning ordinarily at $1,620 a year, and those on the professional level, beginning at $2,000 a year; if promoted to a higher type of work, the salaries, of course, go higher. In the first category are the examinations for Junior Civil Service Examiner, held in 1934 and 1936.[1] In the second category are the Social Science Analyst examinations, held in 1937,[2] and the two examinations for Junior Professional Assistant, one held in 1939 and one in 1940. The political science (and other) appointees from the 1934 and 1936 lists were often given purely clerical and usually routine jobs, and those from the political science group of subjects of the 1937 list were so few in number as to be almost negligible. The committee will confine its attention, therefore, to the 1939 and 1940 lists, or "registers," as they are called. These tests look toward creating, in good

* A report of the Committee on the Civil Service (Frederick M. Davenport, chairman, Leonard D. White, G. Lyle Belsley, Lewis B. Sims, and Frances R. Fussell), submitted to the American Political Science Association at its Chicago meeting, December 29, 1940.

[1] See Leonard D. White, *Government Careers for College Graduates; An Experiment in the Selection of Federal Employees from Liberal Arts Colleges* (Chicago: The Civil Service Assembly [Pamphlet No. 8, 21 pp.], June, 1937).

[2] See Lewis B. Sims, "The Social Science Analyst Examinations," in this REVIEW, Vol. 33 (June, 1939), pp. 441–450.

time, a body of junior executives for whom there is a real need in the federal government. The top students in the colleges are among those who are particularly fitted for these positions.

Like their predecessors, the Junior Professional Assistant examinations included political science as merely one of many disciplines, and the only optional of these latest examinations in which we have a direct interest is Optional 1, "Junior Administrative Technician." In 1939, there were 5,900 who filed for the examination in this optional; 5,700 were admitted to the competition; and 1,300 passed. In 1940, there were 4,600 applicants; 2,900 were admitted; and 540 passed. These figures are not exactly comparable, for reasons soon to be stated.

What of the use made of these registers? The answer is, emphatically, that both the 1939 and the 1940 registers for Junior Administrative Technicians were in great demand as soon as they were established, and they continued to be used, because the people selected therefrom proved to be, on the whole, uncommonly satisfactory for the work assigned them. From the 1939 register, somewhat more than 300 appointments were made, of which about half were of the public administration type, compared with about 250 that have already been made from the 1940 register (about six months' use). It appears from these figures that there is a good chance in the public service, in appropriate positions, for young men from the colleges.

The level and type of work assigned is an important factor, and a discussion of that point is presented later in this report.

Education to Meet the 1940 Requirements. The educational requirements for Junior Administrative Technicians were broader and looser in 1939 than in 1940. In 1939, they consisted of a bachelor's degree with 20 semester hours in "political science, public administration, business administration, or any combination of these subjects." In 1940, a bachelor's degree was required and, in addition, the following: "24 semester hours in public administration, political science, or economics, or a combination of these subjects, provided that at least 12 hours must have been in any one or a combination of the following: principles of public administration; public personnel administration; organization, management, and supervision; public budgetary or fiscal administration; administrative or constitutional law; and courses in the application of public administration principles to functional activities such as public welfare administration, public health administration, and public utilities regulation."

Political science, it will be seen, was still included, with increasing emphasis upon public administration—general, personnel, and fiscal—and upon organization and management. Indeed, so great was this emphasis that many applicants found themselves eligible only by virtue of a semester or more of graduate work.

Another interesting factor is the following. Because of the different educational requirements, the statistics quoted above, comparing the 1939 and the 1940 Junior Administrative Technician registers, require explanation. The 1,300 placed on the earlier register consisted of about 250 eligibles in public administration, about 600 in business administration, only six in personnel administration, and about 450 in political science *per se*. Thus, only 250 passed an examination comparable with the one passed by 540 in the succeeding year, and it was almost exclusively from among these 250 that there was demand from federal officials for filling staff-aide positions. Through these examinations several hundred good men entered the federal service.

Possible Objections to the 1940 Requirements. Three objections to the strict requirements set down in 1940 have been voiced by a number of professors and students. These objections are: (1) By inserting the provision that a core of 12 semester hours had to be shown in public administration, organization and management, or public law,[3] the Civil Service Commission was aiding in the "vocationalizing" of political science at the undergraduate level.[4] (2) Small colleges offering only one or two courses in these fields were discriminated against.[5] (3) By the admission of an unlimited amount of constitutional and administrative law, a disproportionate number of outright attorneys were eligible, whereas applicants trained in other branches of political science—some of them more pertinent—were disqualified. A fourth objection has been expressed by officials of the federal departments, namely, that no credit whatever was given an applicant for his training in the quantitative method, especially statistics but possibly also accounting.

Net Appraisal of the 1940 Requirements. The committee concludes that political science was *not* omitted from the 1940 Junior Professional Assistant examination, because many political science subjects were listed as suitable for qualifying for the Junior Administrative Technician optional.[6] The committee also concludes that, despite the striking improvement in the 1940 announcement over the one in 1939, still further improvement

[3] Much depends on how the Civil Service Commission appraises the content of any college course, for the title alone is not relied upon for classification.

[4] Whether this objection seems valid is answered at page 307, *infra*.

[5] A partial answer to this objection is that it may not be desirable to try to recruit administrative analysts or technicians from *all* the colleges and universities. Some institutions may wish to specialize in public administration, and others may not. This is already true of forestry, architecture, journalism, dentistry, social-service work, and many other subjects. Furthermore, the Civil Service Commission insists that when it certifies a man as an administrative technician, it must be fairly sure that the man really knows administration.

[6] Also, courses in political science were acceptable as partial qualification for the Junior Agricultural Economist optional.

could be effected by liberalizing certain of the requirements and tightening others.

Prompting the committee to propose a change in the requirements for 1941 are three factors: (1) the desire to allow a wider choice of subjects, having in mind the smaller colleges and their more restricted curricula; (2) the desire to recognize the value of a modicum of legal knowledge about public administrative affairs, but to bar, at the same time, the man trained as an attorney but not as administrative analyst; and (3) the desire to recognize the administrative technician's great need for an awareness in the statistical or quantitative approach to administration and administrative analysis. At least the political science curriculum for the undergraduate should include discipline enough in the subject to develop in the student headed for the public service a modicum of ability to use statistics and to understand something of the statistical method. The committee has discussed these points with the Commission, and it is understood that they will be reflected in the Junior Professional Assistant announcement for 1941.[7]

It will be seen that the Committee has little fear that political science will be "vocationalized" at the undergraduate level. On the contrary, it believes that a study of public administration at the undergraduate level can serve as a needed synthesizer of the entire field of political science and a great stimulation to informed citizenship. When properly organized, studies in public administration reach not only across the different specialties that constitute the political science curriculum, but also into certain of the disciplines taught in other quadrangles of the campus.

The Appointees and Their Work. To keep our perspective and hence our thinking as clear as possible, a brief statement should be added relative to the type and level of work that the appointees from the Junior Administrative Technician optional actually do. First, it should be made clear that many appointing officers are loath to proffer a $2,000 professional position to the liberal arts graduate with no additional education and no ex-

[7] On January 6, 1941—after this report was written—the 1941 announcement was made, the closing dates being January 20 and 23. For the Junior Administrative Technician optional the requirements read as follows:

"30 semester hours in public administration, political science, economics, history, or sociology, or in a combination of these subjects, provided that at least 12 hours must have been in any one or a combination of the following: principles of public administration; personnel administration (public or private); management and supervision (public or private); public finance; public budgetary administration; administrative or constitutional law; courses in the application of public administration principles to functional activities, e.g., public welfare administration, public health administration, and not to exceed 3 semester hours in statistics and/or accounting." Then there was added, significantly: "The professional questions in the examination for Junior Administrative Technician will fall in the field of public administration."

perience;[8] and since many applicants who file for this examination are willing to go to work at $1,620, this is at the present time the customary starting salary for appointees from the Junior Administrative Technician register. These young men—there are few women—are given assignments ranging from pure routine to work really worth $2,000, depending largely upon which federal agency is doing the employing.

A negligible few appointees are given supervisory assignments. Rather, they are put at plain clerking, at administrative analysis of an elementary nature, or at semi- or sub-professional work demanding a familiarity with the structure, management, and finance of government. Their duties are primarily as staff aides; they perform as personnel or budget assistants, as administrative clerks, or as junior analysts in administrative and planning studies. Among the federal agencies recently appointing such personnel are the War Department, the Social Security Board, the Department of Agriculture, and the Bureau of the Budget. A few Junior Administrative Technicians find employment in certain types of line activities, e.g., local institutional analysts in the Bureau of Agricultural Economics, field-assistant work with the Social Security Board, and state and local government finance in the Bureau of the Census.

So much for the Committee's more specific assignment. Attention is now turned to possible improvements at our universities and at the Civil Service Commission.

Needed Changes in the Political Science Curriculum. Judging by the opinions of federal officials and by observation at our various colleges and universities, five changes are required in connection with the political science curriculum, namely:

(1) Provision should be made whereby undergraduate students are given tools to work with. This means, primarily, that political science students should be required, or at least encouraged, to pursue a semester or year of statistical method and a semester of accounting. In academic circles, it is hardly realized how current is the use of the quantitative technique, either in administrative analysis or in social science research generally in the federal service.

(2) Further emphasis should be placed upon method—upon ways of approaching a problem, upon ways of solving or analyzing a problem, upon precision and clarity of thought, upon mind-training as well as mind-filling. Some federal officials contend that the young political scientist is less systematic and less original than his fellow-worker educated in engineering, natural science, economics, or accounting.

(3) Students of political science should be both allowed and encouraged

[8] This is true especially in the case of social-service work, where the Civil Service Commission stipulates "at least 1 full year of study (undergraduate or post-graduate) in social service in an accredited school of social work. . . ."

to take courses in organization and management in other disciplines, such as business, engineering, education, and social-service work. For these courses, there are often prerequisites, the waiving of which might be considered by the professional schools in question.

(4) Effort should be exerted to meet the needs of an ever-increasing number of students who plan neither to teach nor to engage in research activities, but wish to enter the service of government or become active as leading citizens in public affairs. In view of present trends, it appears that public administration might well be included as a part of every political science curriculum, not from a mere vocational standpoint, but from the standpoint of the application of principle and theory to government in action. This implies that the time has come for a thorough re-examination of the scope of political science and of the departmental curricula designed to embrace the field.[9]

(5) Finally, vocational guidance is needed—vocational guidance based on knowledge of the facts. Political science most certainly does not have to be vocationally useful in order to be worth studying, but it is a pity for a professor or a placement officer to tell undergraduate students that they will have glorious governmental careers if they will just pursue plenty of college courses in "government." Faculty members and placement officers should familiarize themselves especially with the opportunities (and the lack of opportunities) for political scientists in federal employment.

Some Things the Civil Service Commission Can Do. Not all the blame for student unawareness of public-service opportunities can be placed at the door of the professor. The Civil Service Commission itself can do much toward integrating the colleges with the federal service. Within the last two years some progress has been made in this direction by the sending of Commission representatives to some of the larger universities.

Specifically, we think the Civil Service Commission should effect three key improvements, namely:

(1) The Commission should give adequate information, statistical and otherwise, on federal employment. This means maintaining and publishing accurate statistics on the number (by types, by grades, and by agencies) of various categories of positions in the federal service; also statistics of examinations therefor, and the opportunities (and lack of opportunities) for potential holders of such positions. A start was made two years ago to

[9] A start along this line has been made by a committee under the chairmanship of Dr. Ernest S. Griffith, a round table at the 1940 meeting of the American Political Science Association being held on the subject of "The Relation of Political Science to the Other Social Sciences." Another committee, headed by Professor Joseph P. Harris, has studied the relation between federal officials and political scientists, and its report, in somewhat abridged form, will be found on pp. 333–343 below.

compile some of the statistical information, but little has been released to the public. Also, some work has been done on employment opportunities, but the findings, too, have not been published. Interested students ought to know what the federal government has to offer.

(2) The Commission should formally tell of its plans and of the approximate content of its examinations as much in advance as possible, in order that students may plan and faculties may guide. The examinations themselves should be held annually and early enough in the year so that offers of federal employment can be made before graduation time.

(3) It is understood that the Commission has created the position of principal examiner in public administration, and is in process of recruiting some one for it. His status should be on a par with that of the principal examiner in economics, engineering, and law, each of which carries a starting salary of $5,600 and has a limit of $6,400. This official should be called upon to devote part of his time to supervising examining work in public administration and the remainder to visiting universities and colleges (not unlike representatives of great industrial concerns), undertaking pertinent research and preparing the results for publication, advising on printed material released for the information of the public or for the announcement of examinations—in short, to studying improved methods of attracting and selecting top-flight men and women for the service of the government of the United States.

FREDERICK M. DAVENPORT, LEWIS B. SIMS, *et al.*

The Legal Status of Albania. On April 7, 1939, the Italian news agency, Stefani, announced officially that Italian troops had landed in Albania. Having overcome some resistance, they entered Tirana, the capital, the following day and then rapidly completed the occupation of the country. An attempt at legal justification followed this military action.[1] The Italian press announced that after the landing of troops an Albanian provisional committee, quickly formed, convoked an Assembly composed of delegates from all Albanian provinces. On April 12, 1939, this Assembly, having vested itself with full powers, declared the decadence of the preceding régime and offered the crown of Albania to the king of Italy. The Italian law of April 16, 1939, n. 580, declared that the king of Italy, having accepted the crown of Albania, assumed for himself and for his successors the title of King of Italy and Albania, Emperor of Ethiopia.[2] Then followed a series of measures legally entrusting Italy with full control over Albania.

From the political point of view, the events of April, 1939, did not introduce considerable modifications in the relations between Italy and Albania. It was generally conceded that for several years Albania had actually been under the full control of Italy. As far back as November 27, 1926, the two countries had concluded a Pact of Friendship and Security, providing that "any disturbance threatening the political, legal, and territorial status quo in Albania was contrary to their common interests" (Art. 1).[3] Italy and Albania also undertook "not to conclude with other powers any political or military agreement prejudicial to the interests of the parties" (Art. 2).[4] A letter accompanying the treaty gave Italy the right to intervene, on Albania's request, in the country's foreign and domestic affairs. On November 22, 1927, the parties concluded an "unalterable defensive alliance" for 20 years. In case of conflict, each of the contracting parties undertook "to throw in its lot with the other and to place at the disposal of its ally all military, financial, and other resources which may be of assistance in terminating the conflict, should such assistance be called by the threatened party" (Art. 1). The parties were bound "not to enter into negotiations for a peace, armistice, or truce except by common consent" (Art. 2). This treaty also was accompanied by an explanatory letter.

[1] The author is deeply indebted to Professor Giambattista Rizzo's *La Unione dell'Albania con l'Italia e lo Statuto del Regno d'Albania* (1939). Professor Rizzo's study contains a very valuable analysis of the legal problems considered herein.

[2] This new formula is to be used in the title of Italian laws and judgments (Ital. law, May 5, 1939, n. 660). The Great Seal of the Italian State has been modified to bear the new title (Ital. royal decree, June 1, 1939, n. 876).

[3] The pact and the explanatory letter are published in 60 *Treaty Series of the League of Nations*, p. 27.

[4] The treaty and the explanatory letter are published in 69 *Treaty Series of the League of Nations*, p. 343.

In view of the overwhelming disproportion of forces between Italy and Albania, these agreements were obviously intended completely to subordinate Albanian foreign policy to that of Italy. It was currently understood that Albania was actually an Italian protectorate.

In fact, the control of the international relations of Albania was coupled with the other typical element of a protectorate relationship, i.e., the interference of the protecting state with the domestic affairs of the protected subject. The Bank of Albania, established in 1924 as the bank of issue of the country, was under the presidency of an Italian and controlled by Italian capital. Italian enterprise and capital built highways, the ports of Valona and Durazzo, and the governmental section of Tirana, exploited the oil fields, managed the airlines, and developed the agriculture of the country. Italian instructors were appointed to organize the army and the police. Under Italian auspices, Achmed Zog was proclaimed king of the Albanians in 1928. By exchange of notes of June 26, 1931, Italy granted a loan to Albania, and a mixed Italian-Albanian commission was appointed to supervise the expenditure of the money, which was to be invested almost completely in public works contracted by Italian firms. The loan was never repaid, and on March 16, 1936, several economic agreements sanctioned the economic and financial dependency of Albania upon Italy.[5] That Albania had become a satellite of Italy was demonstrated at the period of the sanctions against Italy, by her attitude as a member of the League of Nations. In view of the preëxisting hegemony of Italy over Albania, the military expedition of April, 1939, appeared to many people an unnecessary and ostentatious act of force, and gave rise to considerable political speculation as to its real motives.[6]

If not the political, the legal relationship between Italy and Albania and the legal status of the latter were deeply affected by the events of April,

[5] The agreements are the following: (1) convention for the port of Durazzo; (2) agreement for settlement of the financial situation of the Albanian state; (3) agreement for liquidation of the loan of June 26, 1931; (4) agreement for agricultural loan of 10 million gold francs; (5) agreement for loan for the establishment of the Albanian Tobacco Monopoly; (6) provisional commercial agreement. These agreements are published in the *Dictionnaire de Droit International*, issued by the Académie Diplomatique, Vol. III, without date, in an appendix to the article "Albania."

[6] The hypothesis was advanced that the Italian government intended to counterbalance the action of the other Axis partner, who, a few weeks earlier, had invaded what remained of Czechoslovakia. It was also suggested that the invasion might have been intended to warn the other Balkan states not to join the British-French coalition. Nor was there lack of suggestion that the Italian government desired to gain a cheap success to bolster its domestic prestige. The official Italian explanation, i.e., that the intervention was provoked by an attempt of King Zog of Albania to create a misunderstanding between Italy and Jugoslavia, does not appear to have been convincing.

1939. Provision was made for these changes by the conclusion of a series of international agreements between Italy and Albania and by the enactment of several domestic measures within the two countries. The most important acts were the following:

(1) *International Agreements.* (a) An agreement of April 20, 1939, concerning the rights of the respective citizens, by which Italian citizens in Albania and Albanians in Italy enjoy all the civil and political rights which they enjoy in their respective national territories. (b) An economic, tariff, and currency convention of April 20, 1939, by which the kingdoms of Italy and Albania were linked together in an economic union, both countries forming only one territory for the purpose of the application of the tariff law. Italy was entrusted with authority to conclude tariffs and other economic and currency agreements for the Union. A supplementary convention was signed on May 28, 1939, to regulate some technical details. (c) A treaty of June 3, 1939, by which the management of the diplomatic and consular services of Italy and Albania was unified and concentrated in the Italian Ministry of Foreign Affairs. (d) A tacit agreement, resulting from a resolution of the Albanian Council of Ministers of May 26, 1939, and from the Italian law of July 13, 1939, n. 1115, which merged the armed forces of Albania with corresponding Italian forces.

(2) *Domestic Measures.* (a) An Italian law of April 16, 1939, n. 580, creating the office of General Lieutenant for Albania, residing in Tirana and representing the king in Albania. Besides being an organ of the Italian state, the Lieutenancy is also an Albanian organ, provided for in the Albanian constitution (Art. 12). (b) An Italian royal decree of April 18, 1939, creating the office of Under-secretary of State for Albanian Affairs within the Italian Ministry of Foreign Affairs. (c) A new Albanian constitution, granted by Victor Emmanuel, in his capacity of king of Albania, on June 3, 1939. (d) An Albanian decree of June 2, 1939, issued by the General Lieutenant, approving the by-laws of the Albanian Fascist party. (e) In order to complete the union between the two countries, several Albanians in Italy were appointed members of the Senate, of the Foreign Service, and of the Academy of Italy; some were appointed army officers and university professors. Italian officials were also appointed counselors in the Albanian ministries.

The union of Italy with Albania gives rise to several legal problems.

(1) It is a well-established principle of international law that a constitutional change, however profound, does not affect the international status of a state. If the events of 1939 consisted only in a change of régime, this by itself would not have produced the extinction of the Albanian state. In order not to arouse the susceptibilities of the Albanian people, it seems to have been the desire of Albania and Italy that the former should continue to be considered an international subject. The present Albanian

state is assumed to have a complete social, political, and economic organization; it has its own name, flag, official language, national bank, currency, and stamps. Subsequent to the events of April, 1939, Albania concluded the above-mentioned conventions with Italy, which presupposed mutual assumption of Albania's status as an international subject. In their preambles, the Italian-Albanian conventions of April 20, 1939, declared that they were aimed to establish coöperation between the two countries "within the framework of the sovereignty of the respective states." After the Italian invasion, international acts were also performed by Albania with regard to international subjects other than Italy.[7] On April 13, 1939, Albania notified the League of Nations of her withdrawal. Her capacity to perform such an international act did not give rise to any objection. According to some sources, the Albanian declaration of war against Great Britain, in June, 1940, came later and independent from that of Italy.[8]

(2) The above-mentioned international and domestic acts were aimed to establish an international union between Italy and Albania. Though the crowns of Italy and Albania are separate, the Italian law of April 16 1939, n. 580, and Art. 1 of the Albanian constitution, which make the crown of Albania hereditary in the dynasty of Victor Emmanuel of Savoy, imply a tacit understanding between Italy and Albania that the crown of Albania shall always and only be vested in the Head of the Italian State. Furthermore, the above-mentioned international and domestic acts create a unified organization for the satisfaction of the common interests of the two countries in the field of economics, tariffs, and currency affairs, of international relations, and of external defense. The Italian-Albanian union is therefore not a "personal union," similar to that which existed from 1714 to 1837 between Great Britain and Hanover, which were linked together during that period by the accidental and non-prearranged fact that they had the same individual as monarch. The new union should rather be considered a "real union" such as those which existed between Sweden and Norway and between Denmark and Iceland, where the community of the head of the state was prearranged and presupposed a wide coöperation between the members of the Union for several common purposes. In the absence of any provision for termination or dissolution, the Italian-Albanian union is to be perpetual and permanent. The Union is devoid of all agencies, its international relations being carried on by Italy, who acts through her own organs for herself and as an agent for Albania.[9] Because of

[7] On the contrary, in the case of Austria, annexed by Germany on March 13, 1939, the notification to the League of Nations that Austria's membership had ceased on March 13, 1939, was addressed by Germany.

[8] *New York Times*, June 16, 1940.

[9] See Sereni, "Agency in International Law," *American Journal of International Law*, Vol. 34 (1940), p. 640.

the absence of its own organs, the Union must be considered not to possess an international personality separate from that of its two members.

(3) The most peculiar feature of the Italian-Albanian union, which also confirms its character as a real union, is the prearranged community of régime between the two members.[10] Membership in the Union presupposes the acceptance by Albania of the political and constitutional doctrines and institutions of the senior partner. Art. 1 of the Albanian constitution defines Albania as a constitutional monarchy. However, the truth is that the king of Albania is vested with unusually extensive powers, comprising most of the exceptional powers that in Italy are entrusted to the head of the government. In Albania, it is the king alone who imposes upon the state its political direction. He exerts his powers through the General Lieutenant. There exists a legislative assembly, whose rôle is to coöperate with the king in the exercise of the legislative function (Art. 5 of the constitution), but the actual importance of the parliament is negligible. Practically, the reorganization and most of the present activities of the Albanian state are carried on through decrees of the General Lieutenant. These decrees are executive acts, having the effect of laws, and are only subsequently converted into formal laws by the Albanian parliament. The king is assisted by a council of ministers, whose president is not entrusted with special powers. The ordinary affairs of the state are transacted through the ministries.

The Fascist character of Albania is especially apparent in the fact that it is a single-party state, the Albanian Fascist party being the only party tolerated. The structure of this party and of its auxiliary organizations is copied from that of the Italian Fascist party and of its corresponding auxiliary organizations. The concentration of almost every power in the executive, the negligible function of the parliament, and the single-party system are the main elements which impress the Albanian state with the character of totalitarianism. A series of accessory provisions emphasize this aspect of the new régime: the legislative assembly is called the Fascist Corporative Council; the Albanian flag was modified by inserting in it the symbol of the fasces. One might venture to state that the new Albanian régime is even more fascist than the Italian régime: in fact, being a creation *ex novo*, impressed by a sudden and powerful act of force, the Albanian régime did not have to overcome gradually the historical and political resistances with which Italian fascism was confronted. Furthermore, the Italian manipulators of the new Albanian régime availed themselves of the previous political and constitutional experience of Italian fascism.

(4) The principle of international law concerning the equality of states was apparently respected in the union of Italy and Albania. On April 15, 1939, the Head of the Italian Government declared that "Albania entered

[10] See Rizzo, *La Unione, cit.*, p. 37.

as an equal in the Italian imperial community." An Italian announcement of April 18, 1939, declared that the new relationship of Italy and Albania was to be based upon the "fact of the independence and sovereignty of Albania." Actually, with regard to the union of Italy and Albania, the concept of legal equality between the partners is devoid of any practical significance. Albania is completely under the hegemony of Italy. By means of the international representation of Albania, Italy dominates the foreign policy of the former. Through the authority of the General Lieutenant, Italy directs the whole political, administrative, and legislative life of the Albanian state. Through the action of the Fascist party, Italy regiments the Albanians and controls their political allegiance. In fact, the Albanian Fascist party depends on the Italian Fascist party. In a note which preceded the publication of the by-laws of the Albanian Fascist party, it was authoritatively stated that this party was "neither autochtonous nor autonomous, but an affiliation of the [Italian] Fascist party." By Italian royal decree of July 9, 1939, n. 1027, the by-laws of the Italian Fascist party were modified to make the Secretary of the Albanian Fascist party a member *ex officio* of the Council of the Italian Fascist party. In line with the subordination of the Albanian state to the Italian, there has been effected a corresponding subordination of the Albanian Fascist party to the Italian Fascist party. This is especially important since both parties are, in their respective countries, the only authorized political parties and are also quasi-statal organizations. Furthermore, it was Albania that accepted as her king the king of Italy and that was actually included within the Italian tariff sphere; it was the Albanian army that was incorporated in the Italian army. Especially in this latter aspect, the union of Albania and Italy assumes some characteristics of a vassal relationship. A precedent can be found in the case of the suzerainty of Turkey over Egypt, which suzerainty, toward the end of its existence, was based chiefly upon the appurtenance of the Egyptian forces to the Turkish army.

(5) This brings us to the question of whether Albania may still be considered a subject of international law. If the technical-formal conception of the international personality of the state, which up to now has prevailed, is still to be accepted, no doubt can be entertained that Albania is still a subject of international law. It may be alleged that Albania has a political organization, a territory, a population, and the capacity to carry on international relations, even though she has delegated this power to Italy. However, if we cut through the veil of legal fictions so as to reach the root of the relationship between Italy and Albania, it appears that the Albanian state which existed prior to April, 1939, now remains only an empty shell. Albania, in fact, is only an annex of Italy; it exists only in function and for the advantage of the latter. In harmony with the princi-

ple that the controlling state is responsible for the international wrongs of the controlled state, Italy may certainly be held liable for the international wrongs committed by Albania, even where the latter is to be considered a subject of international law. But relying upon the fiction of the separate existence of the two states, Italy may disclaim every responsibility for the pecuniary international obligations of Albania prior to the Italian intervention, on the ground that there has been no international extinction of Albania and no succession of Italy. In every international union in which both Italy and Albania are members, Italy from now on will practically control two votes, hers and that of Albania. In a war in which Italy is a party, it may be convenient for her to keep Albania neutral, in order that the Albanian oil fields may continue to produce much-needed oil for Italy without danger of Albania being bombed.[11] These are only a few possible consequences of such an anomalous situation. If the conclusion that Albania is still an international subject is to be accepted, the inference is irresistible that the traditional rules of international law are inadequate to meet the new situations arising from the activities of the totalitarian states. Multiplication of situations analogous to that of Albania, in consequence of the occupation or control by the Axis Powers of apparently independent states, should, then, bring about the establishment of new rules of international law to take cognizance of these questions and of their possible consequences.

ANGELO PIERO SERENI.

New York City.

The Commission to Study the Organization of Peace. In the "battle of committees"[1] which has raged over the foreign policy of the United States in recent months, the committees which have played the most active and most publicized rôles have been such propaganda groups as the Committee to Defend America by Aiding the Allies,[2] the America First

[11] On June 16, the Albanian Fascist Corporative Council ratified a decree providing (Art. 1) that: "The Kingdom of Albania considers itself at war with all nations against which Italy is at war—at present or in the future" (*New York Times*, June 16, 1940). However, this is not an international act, but a domestic act which can always be repealed.

[1] For summaries of the "battle" and descriptions of the committees involved, see *Newsweek*, Dec. 30, 1940, pp. 9–10; *Time*, Dec. 23, 1940, p. 13, and Jan. 6, 1941, pp. 11–12.

[2] Organized in May, 1940, with William Allen White as chairman and with headquarters at 8 West 40th Street, New York City. On May 17, 1940, Mr. White sent telegrams to various people inviting them to serve on such a committee, and on May 20, 1940, the formation of the committee was announced.

Committee,[3] and the No Foreign War Committee.[4] Such groups have left untouched an important task: careful, sober research into the problems which the organization of peace presents to the American people. This latter task, however, has not been wholly neglected. A Commission to Study the Organization of Peace, initiated by Professor James T. Shotwell of Columbia University in the fall of 1939, has undertaken at least a part of the task. Its methods of functioning, its work, and its objectives are of current interest to political scientists, and the present note is intended to call attention to the more important features of the Commission's work.

In a statement published in December, 1939, the Commission stated that its objective was to assist the American people in thinking through "the fundamental bases of lasting peace." It proposed to do this by making a critical survey of the factors involved in the organization of peace. The statement added a few words as to the Commission's methods of approach: "The Commission will first study the fundamental principles of the problem before us, including such subjects as the economic interdependence of peoples, the changing nature of war and its effects in our world, and the experience and experiments since the World War of 1914–18. Coming to the heart of the problem, the Commission will consider the world we want, a world of justice and peace, and the means of arriving at these ends. The problem will be viewed from political, economic, and social angles. Lastly, of course, there must be faced the problem of the rôle of the United States in dealing with these profoundly vital questions. It is not enough, however, for a group of experts in this or any other country to reach agreement as to the bases of a lasting peace. People everywhere must be studying the same problems and reaching their own conclusions. Popular education in this field is an essential part of the effort."[5]

The formation of the Commission was sponsored by the American Association of University Women, the American Union for Concerted Peace Efforts,[6] the Church Peace Union,[7] the League of Nations Association, and the World Citizens Association.[8]

[3] Organized in September, 1940, with Brig. Gen. Robert E. Wood (retired), chairman of Sears, Roebuck & Co., as chairman, and with headquarters at 1806 Board of Trade Building, Chicago. *New York Times*, Sept. 25, 1940, 13: 2; Nov. 13, 10: 5.

[4] Organized in December, 1940, with Verne Marshall, editor of the Cedar Rapids (Iowa) *Gazette*, as chairman, and with offices at 100 East 42nd Street, New York City, and Cedar Rapids, Iowa.

[5] Pamphlet issued by the Commission. See also *Christian Science Monitor*, Jan. 2, 1940; *New York Herald-Tribune*, *New York Times*, and *New York Sun*, Jan. 3, 1940.

[6] This Union grew out of an earlier Committee for Concerted Peace Efforts. It was organized on Mar. 30, 1939, for three purposes: to oppose aggression, to promote economic justice between nations, and to develop adequate peace machinery. On the outbreak of the war in Europe, the Committee for Concerted Peace

Invited to associate themselves as members of the Commission were scholars,[9] government officials,[10] business men and lawyers,[11] and at least one labor leader.[12] The specific subjects which were regarded as a part of the problem of organizing peace were assigned to various members; reports on these subjects were drafted by the respective members; and the Commission as a whole debated the principal reports. It was anticipated that the reports, as amended in Commission debate, would be published as chapters of one or more books. Plans at the present, however, are to publish the studies in the *International Conciliation* Series of the Carnegie Endowment for International Peace.

While the scholars were at work on their reports from November, 1939, to June, 1940, the executive committee of the Commission promoted scores of study groups throughout the country[13] which utilized an outline of the

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Efforts organized the Non-Partisan Committee for Peace through Revision of the Neutrality Law. Honorary vice-presidents of the Union are James T. Shotwell, Mary E. Woolley, Charles G. Fenwick, and G. Ashton Oldham. The director is Clark M. Eichelberger. Headquarters are at 8 W. 40th Street, New York City.

[7] Founded in 1914 by Andrew Carnegie.

[8] Organized in 1939 with headquarters at 86 East Randolph, Chicago, Illinois. Ray Lyman Wilbur, Palo Alto, California is chairman; Quincy Wright, Chicago, is secretary.

[9] Among the scholars associated with the Commission are Frank Aydelotte, Clarence A. Berdahl, Kenneth Colegrove, Francis Déak, Marshall Dimock, Clyde Eagleton, Brooks Emeny, Charles G. Fenwick, Denna F. Fleming, Benjamin Gerig, Harry D. Gideonse, Carter Goodrich, Frank P. Graham, S. G. Inman, Philip C. Jessup, Walter H. C. Laves, Frank Lorimer, William P. Maddox, William A. Neilson, Oscar Newfang, Ernest M. Patterson, Frederick Schuman, Walter R. Sharp, Smith Simpson, Preston Slosson, Eugene Staley, Waldo Stephens, Sarah Wambaugh, and Quincy Wright.

[10] Among the government officials are Donald C. Blaisdell (U. S. Dept. of Agriculture), Marshall Dimock (U. S. Dept. of Labor and latterly U. S. Dept. of Justice), Katherine Lenroot (U. S. Dept. of Labor), and Charles P. Taft (Cincinnati, Ohio City Council).

[11] Among the business men and lawyers are Dana C. Backus (lawyer, New York City), John F. Dulles (lawyer, New York City), Lucius R. Eastman (business man, New York City), Henry I. Harriman (business man, Boston), Walter Lichtenstein (banker, Chicago), F. C. McKee (business man, Pittsburgh), Hugh Moore (business man, Pennsylvania), W. W. Waymack (newspaper man, Des Moines), and William Allen White (newspaper man, Kansas).

[12] Robert J. Watt, international labor representative of the American Federation of Labor. Because "women have so far played an inconspicuous part in the efforts of the Commission to Study the Organization of Peace," Mrs. Edgerton Parsons, member at large of the executive committee of the National Council of Women, made a survey of what the members of the National Council of Women were thinking on the subject of organizing peace. A digest of the opinions expressed during the survey was forwarded to the chairman of the Commission. *New York Times*, May 26, 1940.

[13] No accurate record of the number of study groups is available. Judging from

problems to which the Commission directed its own study,[14] and also inaugurated a series of weekly nation-wide broadcasts over the Columbia Broadcasting System. In fifteen such broadcasts, Dr. Shotwell, C. M. Eichelberger, S. G. Inman, C. G. Fenwick, Roger S. Greene, Clarence K. Streit, Ernest F. Tittle, Eugene Staley, and Robert J. Watt discussed the following subjects: the changing nature of war, the aftermath of the World War, disarmament, existing international institutions, the problems of the Americas and the Far East, an inter-democracy federal union, the possible bases of organizing peace in Europe, peaceful change, peace enforcement, markets and raw materials, and the possibilities of world organization.[15] Each broadcast was preceded by a student round-table discussion over the Columbia Broadcasting System on the problems of organizing peace; and as an added incentive to popular discussion, the Commission offered three prizes totaling $600 for the best recommendations on how to organize peace.[16] In sympathetic response to the work of the Commission, the American Academy of Political and Social Science published *European Plans for World Order*.[17]

From November 5, 1939, to May 19, 1940, six plenary meetings of the Commission were held to discuss specific analyses and reports submitted by members on their assigned topics. Some thirty-three reports were submitted, and the more important ones were discussed in the plenary sessions.

The formation of the Commission received somewhat limited newspaper notice, and its announced program of study evoked both approving and skeptical comment. "It will be an interesting experiment," commented the

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the number of study kits prepared by the Commission and ordered from it, probably 400 groups followed the course. Letter from Margaret Olson, secretary of the Commission, January 30, 1941.

[14] *Study Outline on the Organization of Peace*, Jan., 1940.

[15] The broadcasts occurred on the following dates: Jan. 27, 1940; Feb. 3, 10, 17, 24; Mar. 2, 9, 16, 23, 30; Apr. 6, 13, 20, 27; and May 11. A separate broadcast occurred on Nov. 9.

[16] *New York Times*, Feb. 26, 1940; *Christian Science Monitor*, Feb. 27, 1940. The announcement was rather widely carried in the press, appearing also in the *New York Herald-Tribune* and the *Washington* (D. C.) *Post*, Feb. 26; and the *Cincinnati* (Ohio) *Post*, Apr. 23. Winners of the prizes were announced by the Commission on Oct. 7, 1940. First prize was given to the International Relations Group of Smith College, Northampton, Massachusetts; second prize to the Montclair Forum of Montclair, New Jersey; and third prize to a student group at Columbia University. The Commission's committee on award consisted of Dean Virginia Gildersleeve, of Barnard College; Professor Denna F. Fleming, of Vanderbilt University; and President Ernest H. Wilkins, of Oberlin College.

[17] Edited by William P. Maddox. Also at least one public lecture series—that sponsored by the departments of politics and government of Bryn Mawr, Haverford, and Swarthmore Colleges—owed much of its inspiration to the Commission. *New York Times*, Jan. 19, 1941, II, 5: 3.

Columbus (Ohio) *State Journal*, "though we hardly expect much to come of it," adding more approvingly: "It is to be remarked that the problem is not approached from the standpoint of pacifists, and that members of the organization belong to no one political party, section of country, race, or religion."[18]

At the date of this writing, the only publication which the Commission as a whole has issued is a *Preliminary Report*, issued in November of last year.[19] This document consists of a general statement of the effects of science upon the international life of the world and of the need for international institutions to solve international problems. The international institutions recommended are: "(1) an international court with jurisdiction adequate to deal with all international disputes on the basis of law; (2) international legislative bodies to remedy abuses in existing laws and to make new law whenever technical progress requires the adjustment of international practice; (3) adequate police forces, world-wide or regional, and world-wide economic sanctions, to prevent aggression and to support international covenants; (4) international machinery with authority to regulate international communication and transportation and to deal with such problems as international commerce, finance, health, nutrition, and labor standards, in regard to all of which the successful working of the constitution of the International Labor Organization offers valuable lessons; and (5) appropriate authorities to administer backward areas ceded to the world federation. Such administration should give precedence to the interest of the inhabitants of the area, looking to their eventual self-government; should assure all nations equal economic opportunity within the area; and should facilitate colonization and economic development of areas suitable for that purpose without injury to the native inhabitants. International corporations might well be encouraged to enlist world-wide support for the constructive task of developing such areas under supervision of such authorities."[20]

Such institutions, the Commission stated, implied certain limitations upon sovereignty which nation-states must accept, viz., "(a) nations must renounce the claim to be the final judge in their controversies with other nations and must submit to the jurisdictions of international tribunals. The basis of peace is justice; and justice is not the asserted claim of any one party, but must be determined by the judgment of the community; (b) nations must renounce the use of force for their own purposes in rela-

[18] Jan. 15, 1940. See also *Montana Standard* (Butte), Jan. 31, 1940; *Allentown* (Pa.) *Call*, Feb. 1, 1940; *Raleigh* (N. C.) *News-Observer*, Apr. 19, 1940. For news articles announcing the formation of the Commission, see *Christian Science Monitor*, Jan. 2, 1930; *New York Herald-Tribune* and *New York Times*, Jan. 3, 1940.

[19] Commission to Study the Organization of Peace, *Preliminary Report*, Nov. 1940.

[20] *Ibid.*, pp. 12–13.

tions with other nations, except in self-defense. The justification for self-defense must always be subject to review by an international court or other competent body; (c) the right of nations to maintain aggressive armaments must be sacrificed in consideration for an assurance of the security of all, through regional and world-wide forces subject to international law and adequate to prevent illegal resort to international violence; (d) nations must accept certain human and cultural rights in their constitutions and in international covenants. The destruction of civil liberties anywhere creates danger of war. The peace is not secure if any large and efficient population is permanently subject to a control which can create a fanatical national sentiment impervious to external opinion; and (e) nations must recognize that their right to regulate economic activities is not unlimited. The world has become an economic unit; all nations must have access to raw materials and its manufactured articles. The effort to divide the resources of the world into 60 economic compartments is one of the causes of war. The economic problem arising from this effort has increased in gravity with the scientific and industrial progress of the modern world."[21]

The "Preliminary Report" received moderate publicity in the press, receiving sizable news space in the *New York Times*, *New York Herald-Tribune*, *New York Sun*, *Louisville Courier Journal*, *Christian Science Monitor*,[22] and attention in nine other papers.[23] In four newspapers, editorial comment was aroused by the report, ranging from the skeptical to the approving.[24] The *New York Herald-Tribune* thought that the Commission had taken too theoretical a view of its problems, suggesting that the recommended institutions could come only as a result of strong nations utilizing their economic policies so as to promote international coöperation. "In the dawn of a British victory," read the editorial of the *Herald-Tribune*, "it will be economic questions—the feeding and reconstruction of a shattered Europe, the revival of industry, the restoration of markets—which will be crying most imperatively for settlement, which will indicate the lines along which the machinery of international organization must develop, and will supply the pressure that will secure genuine consent to the erection of such mechanisms."

The *Preliminary Report* marked a turning point in the work of the Commission. It served as the basis of a second study outline, based on the Report, and entitled *A Study of the Organization of Peace*, which, like the

[21] *Ibid.*, pp. 11–12. [22] In issues for Nov. 12, 1940.

[23] *Rochester* (N. Y.) *Times-Union; Duluth* (Minn.) *News-Tribune; Kansas City* (Mo.) *Star; Oklahoma City Oklahoman; Omaha World-Herald; Bronx* (N. Y.) *Home News; Meridan* (Conn.) *Record; Brooklyn* (N. Y.) *Eagle*, and *Hackensack* (N. J.) *Bergen-Record*, all of Nov. 12, 1940.

[24] *New York Herald-Tribune*, Nov. 13, 1940; *Louisville* (Ky.) *Courier-Journal*, Nov.. 13; *Helena* (Mont.) *Independent*, Nov. 16; and *Syracuse* (N.Y.) *Post-Standard*, Nov. 18.

first, is being used by the coöperating study groups. A new series of radio talks is also being planned which will emphasize that, whatever the contribution which the United States may make to the victory of Great Britain, it "will not save democracy, nor will it give us the peace we need; it will leave the world, including ourselves, upon a totalitarian basis, continuously preparing for the next war—unless we organize the world to prevent war."[25] It is planned, finally, as a part of the educational work of the Commission in coming months to broaden the Commission's geographic basis by establishing regional committees in such places as Chapel Hill, Dallas, and San Francisco.

Liaison with other research and educational groups has been somewhat neglected. With the object of repairing this deficiency, an associate director of the Commission has been appointed.[26] To facilitate this work, the Commission is exploring the possibilities of publishing bulletins from time to time, giving information as to what is being done by other groups and reprinting as far as possible the reports of such groups.

It has recently been proposed to the Commission by its executive committee that the next program of research to be undertaken be the transitional problems which will arise in the immediate aftermath of the war. Embraced in this program would be studies concerning political direction during the transition period, economic readjustments, health and nutrition, migration and resettlement.[27]

To date, it cannot be said that the Commission has more than scratched the surface of the tasks to which it at first addressed itself. It has been more successful in its educational work than in its research; it has done more to keep people aware of the problems of peace than in examining those problems in detail. There are fundamental questions underlying the organization of peace which need critical examination, and only a few of the Commission's reports have been permitted, by space and time limitations, to undertake such an examination. Even so, the significance of the Commission is worthy of attention. Of all the groups and committees seeking to influence American foreign policy, it is the only one that is striving, at least, to examine in connected and systematic fashion the problems of organizing peace.

The Commission brings to mind the "Inquiry" which prepared materials for use at the Paris Peace Conference.[28] There are obvious differences.

[25] Statement of the Commission, "Proposed Series of Radio Talks," dated Dec. 20, 1940 (mimeographed).

[26] Benjamin Gerig, Haverford College. The director is Clark M. Eichelberger.

[27] Communication of Clyde Eagleton, chairman of the studies committee of the Commission, to members of the Commission, dated Jan. 21, 1941.

[28] It should be noted (Mar. 20, 1941) that various discussions are taking place within the Commission which may result in supplementary research programs to fill in some of the gaps left by the first research program.

The creation of the Inquiry[29] was at the instigation of Colonel House, who was in direct and personal touch with President Wilson. The present Commission has no such relation with the Roosevelt Administration. The Inquiry was started after the United States had entered the war of 1917, whereas the Commission was started to assist in the thinking of the American people about the issues of another World War long before the country might become involved in it. The Inquiry, also, was for the assistance of the Administration, whereas the Commission set for itself the task of assisting the thinking of the masses of the American people, distributing its material to scores of study groups and sponsoring radio discussions of the topics within its chosen area of research. Although not a committee for propaganda, the Commission has not sought to conceal its findings. A final difference between the Inquiry and the Commission is that the latter not only has assembled scholars, but has endeavored to enlist the thoughtful participation of persons who have had practical experience with existing international organizations. Thus, its membership includes Frank G. Boudreau and Benjamin Gerig, formerly of the League of Nations Secretariat; Henry I. Harriman, former president of the United States Chamber of Commerce, delegate to several sessions of the International Labor Conference, and member of the Governing Body of the International Labor Organization; and Robert J. Watt, international labor representative of the American Federation of Labor, delegate to several sessions of the International Labor Conference, and a member of the Governing Body of the International Labor Organization. Government officials, as noted above, are also members of the Commission.

SMITH SIMPSON.

University of Pennsylvania.

[29] For a description of the "Inquiry," see J. T. Shotwell, *At the Paris Peace Conference* (New York, 1937), Chap. 1. Bodies similar to the "Inquiry" were established also in Great Britain, France, and Germany. *Ibid.*, p. 14.

Teaching Political Science in a World at War.* Writing in the October *Atlantic Monthly*, Paul P. Cram insists that "the task of our teachers at the present moment is one of the most terrible responsibilities in modern times." In less troubled eras, some of us would probably reply that teachers have little influence over college students, who are more interested in sex, football, and liquor than in democracy and war and peace. But Bismarck declared that the German history professor had more to do with winning the Franco-Prussian war than any other group in the Fatherland with the exception of the German High Command. And the fate of France demonstrates with terrible clarity the misfortune that may befall a nation if its people are mentally unprepared to meet existing emergencies.

American college students, the critics declare, are mentally unprepared to face the present crisis. They have no faith in democracy. They fail to regard fascism as evil. They have no principles or ideals for which they will struggle. They seem to doubt, according to the MacLeish formula, that a "free society of free men is worth fighting for."

This lack of moral conviction flows in part, they say, from the fact that students have been "misled" by their teachers. Mr. Lippmann charges that our universities have failed to educate young people for the world they live in. And Mr. Adler argues that "it is not from Hitler, but from the professors, that we shall ultimately be saved." More specifically, he insists that "the most serious threat to democracy is the positivism of the professors, which dominates every aspect of modern education and is the central corruption of modern culture."

Members of the Round Table agreed that many of the charges leveled at American youth and at higher education are gross exaggerations. To revert to the "all-some" argument, obviously not *all* college students have lost faith in democracy, and *most* young people still have *some* moral principles for which they will struggle. The picture undoubtedly has been falsely colored by the fact that a small but vociferous minority have controlled the press on many campuses and have received an undue share of publicity. Nevertheless, it must be recognized that from the present crisis

* At the December, 1940, meeting of the American Political Science Association, the Round Table on Teaching Problems dealt with the implications of the world crisis for the teaching of government. The present attempt to synthesize the discussion flows from the fact that the problems treated were of interest to all teachers of political science. On some of the topics there was considerable disagreement. No member of the Round Table, therefore, should be held for the views expressed herein. The writer is merely presenting the trend of the discussion as he observed it. Round Table participants were Professors H. Schuyler Foster, Jr., Grayson L. Kirk, Rodney L. Mott, James K. Pollock, Kirk H. Porter, John A. Vieg, and Francis O. Wilcox, chairman. Professor Ralph E. Page acted as secretary. Miss Kathryn Durflinger was stenotypist.

flow certain implications for the teaching of government and for the philosophy which underlies our teaching.

To the extent that the charges are true, the political scientist, dealing with exceedingly dynamic materials and numerous controversial issues, must take his share of the blame. (The Round Table was inclined to frown upon the activities of instructors outside the department, such as the English teachers, who "speak so glibly about political issues without possessing an adequate background.") But why single out the professor when he constitutes but one part of the total picture? What about the home, the church, the press, the radio, the movies, the secondary schools, pressure groups, and other forces that go to mold the public mind? Most teachers are unable to maintain a position outside the *mores* of society. And if our teaching has leaned too far in one direction or another—pacifism, cynicism, irrational optimism—we were probably reflecting the temper of the times.

This was true in respect to war and peace. In the post-war feeling of revulsion against militarism, war was debunked not only from the lectern but from the pulpit, in the press, and over the air. The League of Nations and the Kellogg Pact lulled nations into a false sense of security, and people in the democracies refused to think in terms of war. It was not unnatural for members of the teaching profession to share, to a certain extent, the general optimism of the twenties and early thirties. But while numerous political scientists supported the cause of international organization, there were relatively few who failed to give adequate attention to the weaknesses of the peace system, the dangers of fascism, and the forces that make for war. An examination of the textbooks in the international field would seem to bear out that fact.

It was true, likewise, with respect to democracy. As the democracies fumbled about, in what many people considered a futile and half-hearted attempt to solve their problems, they attracted a certain amount of healthy criticism from all quarters. Youth, in particular, was realistic in its analysis. It appreciated, to be sure, the heritage of the democratic tradition. But did not democracy function, too often, as an institution for the protection of certain interest groups? And were there not hundreds of thousands of college students—unhappy, maladjusted, or unemployed—who found themselves unwanted additions to an uncertain society? They were willing to believe in democracy, but many of them longed for a practical demonstration—practical in terms of jobs, happiness, security, and responsibility for themselves.

1. *The Philosophy Underlying our Teaching.* Since the philosophy of liberalism has served as the guiding star for the teachers of government, the Round Table considered it essential to examine the possible results of liberal doctrines. Liberalism invites open criticism; it welcomes a free

examination of its fundamental precepts. Based upon the idea of progress through reason and the utilization of the scientific method, it suggests the objective sifting of available data before decisions are reached. It thus stresses the necessity for open-mindedness. It fosters individualism in social thought. It delights in an honest difference of opinion.

In relatively normal times, liberalism serves its constituency well. Yet it must be remembered that in times of great danger *some* modicum of agreement is necessary if effective action is to take place or if liberalism itself is even to be preserved. Too much emphasis on reason and cold logic may produce a public opinion completely unequipped to cope with the dynamic emotional force of less rational ideologies. Too much criticism may undermine the confidence of the people and result in a disheartening lack of unity and direction. Too much difference of opinion may merely set the stage for those resolute individuals with a program of action who are only too willing to take command of the state. And while it may be scholarly to debate the principles of navigation while the ship is sinking, it is probably not very sensible.

One possible weakness in the teaching of politics is the fact that teachers have too often delighted in exposing the sensational and the unusual features of our government. Machine politics, pork barreling, lobbying, "unproportional" representation, the jury system, election scandals, and similar juicy morsels have proved excellent subjects to arouse student interest. But motivated by our anxiety to lay bare existing evils and our desire to remedy existing weaknesses, we may have been *too* critical of our democratic institutions. Under this formula, democratic government *may* become, in the minds of some students, "bad" rather than "good"; the legislator *may* become a scheming scalawag and the politician another Boss Tweed. Cynicism, skepticism, and disillusionment *may* be the result.

It would, of course, be unrealistic to avoid examination of existing evils. But is it not just as unrealistic to fail to emphasize those praiseworthy features of the American system which have helped to provide security and happiness for a relatively large number of people? Even though they lack the glamor of filibustering and election scandals, would it not seem desirable to devote more time to the ordinary, day-by-day processes of legislation and administration, perhaps devising new techniques for making seemingly prosaic subjects interesting? With more stress on the typical and less on the unusual, we would undoubtedly leave the student with a truer picture of democracy in action.

The praiseworthy attributes of the democratic way might also be illuminated effectively by an increased use of the comparative method in government classes. Trial by jury, with all its defects, looms up as a real protector of human liberty when compared to the ruthless tactics of the OGPU. And few Americans would be willing to accept the German Reichs-

tag as a substitute for the House of Representatives—with all its shortcomings. In terms of fascist techniques, our institutions take on new meaning. But it is important that our liberal values—representative government, equality before the law, freedom of speech, etc.—be spelled out in concrete terms. They must not remain mere verbalisms.

Another result of liberalism is the fact that students may often become confused and lack conviction because there is so much disagreement on fundamentals among those within the teaching ranks. According to the Chinese proverb, you can put two people in the same bed, but you cannot make them dream the same dream. This seems to be especially true of professors. In one class-room, the students may hear a vigorous defense of America's basic institutions—judicial review, the written constitution, federalism, the Congress, our system of representation. The next hour, just across the hall, they may encounter a lecturer with just as many degrees who vigorously denounces those same institutions—who does not believe in federalism and who thinks the written constitution is outmoded. Both are scholarly teachers, both are sincere, both are patriotic. Since those who are supposed to know differ so widely among themselves, should we not expect some of our students to lack confidence?

The members of the Round Table regarded more unity of thought and action in the teaching ranks as socially desirable. Considerable agreement could probably be reached in respect to ultimate ends. We all ought to be able to agree, for example, on such general ideals as better housing facilities, wider distribution of income, and the democratic way of life. But on the means which should be used to attain those ends—federalism, concentration of governmental power, state ownership, etc.—there seems to be hopeless disagreement.

This predicament may be due to the simple fact that teachers of government, as a group, have never attempted to define their objectives, never determined the direction their teaching should take. Why not accept as desirable certain ultimate ends, such as the democratic way of life, and then carefully define those ends? Once the ends are defined, might it not be profitable to examine the extent to which agreement is possible upon the means? Perhaps we could minimize our differences far more than we do.

Some little disagreement appeared among Round Table members concerning the desirability of deliberately basing our teaching on democratic philosophy. One member vigorously protested the proposal that the "social sciences should be prostituted to the indoctrination of any set of political dogmas or any special interest." But does not the perpetuation and the perfection of democracy depend upon the wide acceptance of certain ethical and moral ideals? Would not the teaching profession be wise to accept these ideals as the point of departure for all its teaching and

consciously and collectively canalize its efforts in the interest of democracy? Must we wait, before making a decision, until all the data are in? Or can we afford to wait? This is a question for which the teachers of government must find an answer.

All this presupposes that it is the legitimate task of the political scientist to deal with the formulation of value judgments. Here again strong disagreement arose in the Round Table. One participant declared that "the inculcation of moral virtues, ethical ideals, or social values is a matter beyond the scope of the science of politics." Others held that education should be, to a very considerable extent, an exploration into the field of values, with the students choosing some and rejecting others as they go. And unless we expect this function to be carried out by the philosopher or the humanist, whose knowledge of the field may be limited, we must operate in the class-room not only as political scientists, but as political philosophers as well.

Few professors there are who can avoid a consideration of the "desirable" and the "undesirable," the "good" and the "bad." Conclusions, to be sure, may be couched in different language. Of two possible methods, for example, one may be judged, on the basis of available evidence, as more costly than the other, less efficient, less democratic, or less scientific. It would be most unfortunate if instructors were so completely objective that such judgments were not formulated, for then our colleges would be in real danger of becoming "beleaguered islands of open-mindedness," and our students would graduate to take their place as citizens without sincere convictions about anything—good material for the demagogue. But in stating our own opinions on controversial issues as emphatically as we wish, it is incumbent on us as teachers to present the opposing views clearly and adequately.

It becomes apparent, however, that some outer limits must be established within which the open-mindedness of liberalism is allowed to operate. It would be folly to permit liberal philosophy to be directed toward the destruction of liberalism itself. Perhaps, as one philosopher has suggested, we should tolerate everything but intolerance and hate nothing but hatred.

2. *The Realm of Teaching Procedure.* Turning to the realm of teaching procedure, the Round Table addressed itself to the cutting accusation that the teaching of government does not educate young people for the world they live in, that it is too far removed from the actual operation of our social order. Granted the possibility for improvement in this area, several helpful remedies suggest themselves.

In the first place, political scientists might well utilize more fully the laboratory facilities that our governments provide on the local, state, and national levels. It is a false assumption that the chemist and the

physicist must resort to laboratory exercises in order to demonstrate the basic principles of their respective disciplines while the political scientist need not do so. The tactics of the party machine, the psychology of voting behavior, and the workings of the long and short ballots take on new significance if they can be studied and observed in the natural context of an actual election. The none-too-exciting principles of legislation, administration, and judicial procedure become alive with interest and meaning when students, under competent supervision, visit the legislative chamber, the county poor home, and the district court. Listening to lectures may be helpful. But such activities as interviewing government officials, observing at the polls, or working for a short time at the city hall would undoubtedly give young people a much more vivid understanding of the operation of their government and a much keener appreciation of it.

There are certain practical obstacles, however, to the extension of the laboratory technique. One is the problem of sheer numbers. The biology department may buy microscopes and equip its laboratory for 500 students, but the extent to which the government laboratory may be utilized by such a large number is obviously limited. While government officials are usually willing to coöperate in making information available to interested students, they naturally object to having their day interrupted by huge swarms of freshmen seeking to interview them without adequate preparation. So far as graduate students and majors in political science are concerned, the matter is relatively simple. Yet it is the ordinary student, not merely the specialist in government, that we must reach by such procedures.

In part, this objection may be countered by exercising greater care in planning the projects. Details must be worked out carefully in advance. Additional instructors, in the form of laboratory assistants, may be necessary additions to the staff. All of which means that political science departments will have to convince administrative officials that laboratory work is essential to the better understanding of government. Up to the present, continued pressure by natural science departments has secured for these disciplines an undue share of the budget for laboratory work. Political scientists may need to resort to the great game of politics in order to reverse this unfortunate trend and secure adequate support for their ever-broadening programs. With the emphasis today on the need for a better understanding of democratic society and the desirability of training students for citizenship, this should not be difficult.

Furthermore, the teaching of government will become more realistic whenever a more realistic program of training teachers is adopted. In this respect, higher learning is woefully deficient in two ways. First of all, the graduate programs of most departments are geared to the development of research technicians rather than teachers of government. Too much

emphasis is placed upon the details of structure and function and too little upon a broad understanding of those processes—political, economic, sociological, psychological—necessary for the understanding of our society. Too much stress is placed upon research and too little upon teaching, too much upon securing the doctorate and not enough upon preparing the candidate for his life work.

Even more important is the fact that many teachers are not given the opportunity for assuring their continued competence to teach government in a rapidly changing world. As graduate students, we may have some contact with government in actual operation. Too often, however, after that initial encounter, we withdraw to our castle, pull up the drawbridge, and rarely venture forth again from the protection of the ivy tower.

In view of the dynamic character of our subject-matter, would it not seem desirable to encourage some program of in-service training for teachers of government? This might take the form of actual coöperation with government officials in the solution of civic problems, or projects which would necessitate working in the city hall, the state legislature, or the halls of Congress. More frequent leaves than most members of our profession are able to secure should be arranged. In any case, it is essential that political science teachers, if they are to handle their subject with realism and accuracy, establish and maintain active contacts with our government at its various levels.

From some members came the accusation that many institutions had failed to utilize the college campus in order to provide those experiences which might lead students to a real understanding and appreciation of democracy. The success of democratic government depends, to a large degree, on the ability and willingness of the people to participate actively in the governing process. There might well be ample experience in just such activity during four years of college life.

But too often college administrators have sacrificed democracy in favor of efficiency and expediency. Too often college teachers have functioned as benevolent dictators rather than democratic leaders. Too often, in the formulation and administration of rules and regulations, student participation has been frowned upon.

In emphasizing democratic techniques in higher education, the Round Table agreed that it would be both impractical and unwise for all classes to operate on the principle of free inquiry and free discussion. Many instructors may make their best contribution to the learning process by resorting to the lecture method. One member, especially, insisted that there is too much emphasis on the student learning by himself when his real purpose in coming to college is to get something from his instructor. "Students can read books, work on projects, study in libraries, listen to speeches, all the rest of their lives. In college during a few short years they

have a chance to get something from teachers. . . . Even if students sat with their arms folded and there were no libraries, we could have a university if the teacher did his part and made a real contribution."

There is a very real question, too, as to whether our colleges have provided the best possible background for an understanding of American government. Some members felt that the trend toward the introductory social science course in the liberal arts curriculum will have a wholesome influence. With such a background course, it is possible for the student to study government with the whole social scene as his constant frame of reference. Would it not seem more logical to examine the problems of constitutional revision and legislation *after* he has been introduced to the broader concept of social change? Or to study the conduct of American foreign policy *after* he has examined the nature of the state system within which our policy is formulated and executed? Or to probe the intricacies of party politics *after* he has learned the rôle of public opinion in American life?

Such a course should enable him, too, to understand government in its true perspective—as one of several interrelated disciplines each of which, without the aid of the others, is able to illuminate in only an incomplete way the world in which he lives. Under this formula, the human being becomes, not a political animal or an economic man, but a *social* animal. And the study of government takes on new meaning.

Finally, and a point which has relevance to all the topics discussed, political scientists have failed to utilize many of the newer techniques of evaluation which, if developed, should throw much light on the attitudes, abilities, interests, beliefs, and knowledge of our students. Armed with a better understanding of students, we should be in a much better position to diagnose their needs, stress those areas of learning and those experiences which call for special attention, and, in general, give real direction to our teaching. At present we know in only a crude way just what effect our course in American government has on those who sit in our class-rooms. Many of us, indeed, would be disappointed and chagrined if the results of our efforts were objectively measured. Logically, however, within limits, we might strive to perfect the following procedure: (1) determine the knowledge, skills, interests, and attitudes of our students at the outset; (2) decide what changes we hope to bring about by the course; and (3) measure, at the end of the year, the degree of success we have been able to achieve. Such a procedure would be facilitated if departments in various institutions would coöperate in the preparation and exchange of testing devices.

At the conclusion of the Round Table deliberations, it was moved, seconded, and voted unanimously by the audience present, that a resolution be presented to the American Political Science Association reminding

its members of their responsibilities as teachers and calling upon them to reaffirm their faith in democracy. A resolution was accordingly drawn up* and read at the Business Meeting of the Association, where its adoption was unanimously urged upon the Executive Council. The resolution, which needs no comment, reads as follows:

"*Whereas:* the American Political Science Association recognizes, in the present crisis, the unique responsibility resting upon its members for cultivating in the youth of this land an abiding faith in the democratic system of government,

(1) We rededicate ourselves to the continuing task of promoting an understanding of democracy, and generating confidence in its institutions;

(2) We call upon all our colleagues to honor now, with all the vigor at their command, their solemn obligation—as teachers, scholars, and citizens—to clarify the nature of those forces, external and internal, which are threatening the destruction of the democratic way of life;

(3) We record once more our conviction that democracy is justified in calling upon its people everywhere to defend it by word and by deed in whatever measure of devotion may prove necessary."

FRANCIS O. WILCOX.

University of Louisville.

The Relations of Political Scientists with Public Officials: Report of a Committee to the American Political Science Association.[1] In the summer of 1939, President Charles G. Haines set up this committee and instructed it to study broadly the contribution which political scientists are making to government, their relations with public officials, and how these relations might be made closer and more effective. The problem assigned to the committee is one of great importance to the future of political science. The challenge to political scientists to make an effective contribution to the improvement of government processes and institutions was never so real and so great as it is today. The preservation of democratic institutions, in the long run, will depend in large measure upon scientific study and research, and intelligent, imaginative, and constructive consideration of governmental problems. If political scientists are not making their full contribution to the development and improvement of government—and we believe they are not—it is time to stop and take stock, and to set about

* The formulating committee was composed of James K. Pollock, Kirk H. Porter, John A. Vieg, and Francis O. Wilcox.

[1] The report as presented to the Executive Council of the Association on December 26, 1940, has been abridged for publication here. Copies of the full report may be secured for ten cents each from Kenneth Colegrove, Northwestern University, Evanston, Ill. The members of the committee were: Joseph P. Harris (chairman), Frank Bane, Rowland A. Egger, J. A. C. Grant, Pendleton Herring, W. A. Jump, Harold D. Smith, Elbert D. Thomas, and Leonard D. White.

purposefully to attune political science to the needs of modern society. We are not unmindful of the very great contribution which all social sciences may make, but we believe that the responsibility of the political scientist is especially great.

Public Service Activities of Political Scientists. In order to secure factual data as to the extent and character of the public service activities of political scientists at present and during the last five years, the committee requested the chairmen of political science departments at 137 universities and colleges to supply it with a brief account of such activities. Ninety-one replies were received, including replies from practically all of the larger institutions. Many departments in smaller universities and colleges, particularly those which combine political science with other subjects, failed to reply, and the replies received from the smaller institutions generally indicated few public service activities. Of the 91 departments replying, 52 listed considerable public service activities of one or more of their members, while 39—principally in smaller institutions—indicated relatively few relations with public officials or public activities of any type.

The information supplied in these replies is not sufficiently uniform to permit ready tabulation and statistical analysis. The following findings, based largely upon the replies received, supplemented by the first-hand knowledge and inquiry of the committee, may be ventured:

1. Many political science departments, including practically all of those in the large universities, are in close touch with public officials, frequently rendering advisory, consulting, research, and other services. A considerable number of political scientists are members of official boards, commissions, or committees, and a few hold elective or appointive public offices. Most of the replies received, however, indicate active participation in governmental services by only certain members of the department, and in most instances reported only those who were engaged in such activities. It is not feasible to present any satisfactory statistics on the number of political scientists actively participating in government and those who are not, but it seems probable that those so engaged are considerably in the minority.

2. A relatively small number of political scientists are unusually active in public service undertakings and have made contributions of the first order. Several of these hold high public positions, to which they have brought the results of their training and insight into governmental processes; others have been instrumental in important governmental developments, such as the city manager form of city government, reorganization of state and federal governments, the organization of the planning agencies, the extension and improvement of civil service, training for the public service, public budgeting, and governmental research organizations.

3. A considerable number of political scientists have engaged in a

limited amount of public service at one time or another, and have made distinct and valuable contributions. Most of these have engaged in special *ad hoc* tasks from time to time, usually involving research or consultation upon such problems as taxation, public finance, municipal charters, personnel administration, elections, etc. Others have been members of local governing bodies or of administrative boards or committees, or have served upon special investigating committees.

4. It would appear that there is a definite trend in the direction of greater participation by political scientists in public affairs. The number serving government at all levels in one capacity or another is much greater at present than even five years ago. The contacts which political scientists have with organizations of public officials and civic organizations concerned with governmental affairs, and the services which they render to such organizations, are likewise increasing.

5. A number of political science departments follow a definite policy of rendering service to local governmental agencies and engaging in research on state and local problems wherever the opportunity presents itself. These departments frequently have very close relations with the state leagues of municipal officials, state planning agencies, and civil service commissions within their areas. The attitude of these departments is well expressed by a letter to this committee from the chairman in a smaller state university which has carried on a notable program of public service and research, as follows: "We believe that it is one of the functions of educational institutions in a democracy, and particularly in the state-supported institution, to serve the officers and agencies of our state government to the best of our ability and to as great an extent as our capacity permits. With this idea predominant, the members of the staff have participated in community programs and undertakings whenever it was possible. We have also attempted to make it plain, whenever occasion permitted, both in the press and by personal announcement, that the university and the department stood ready to use its research facilities for the benefit of worthwhile community or state programs."

6. A number of universities have set up research organizations, frequently called bureaus of governmental research, to conduct research on governmental problems, and to facilitate making available the resources of the university to state and local officials. Most of these are located in state universities, as the list below indicates; but a number are located in privately supported institutions, and several are connected with municipal universities.

No attempt has been made by this committee to collect data and to study the operation of these bureaus, but their very existence indicates a desire on the part of political scientists to serve governments within their areas by the study of governmental problems. Several of these research

LIST OF UNIVERSITIES AND COLLEGES WITH GOVERNMENTAL RESEARCH ORGANIZATIONS (INCOMPLETE)

State Universities

Alabama
California (Berkeley)
California (Los Angeles)
Indiana
Kentucky
Louisiana
Maine
Michigan
Minnesota
Oregon
New Hampshire
North Carolina
Pennsylvania
Pennsylvania State
Texas
Virginia
Washington

Municipal Universities

Cincinnati
Wayne

Privately Supported Institutions

Bowdoin
Chicago
Harvard
Pittsburgh
Princeton
Temple

organizations are actively associated with state leagues of municipal officials, with the result that their research work is related closely to the problems confronting municipal governments. Others serve largely the needs of the state government or of the local government where they are located, and a few engage primarily in fundamental research on governmental problems. An examination of the titles of the publications and research projects of these bureaus indicates that they are usually concerned with practical problems rather than with fundamental research. Many have been largely instrumental in bringing about far-reaching improvements in governmental organization and administration. Although their activities may at times appear ineffectual, in the long run these research bureaus are an influential force and have a notable influence upon government within their areas.

The Bureau of Public Administration of the University of Virginia is worthy of special mention because it serves as a planning and clearing-house agency for the facilitation and promotion of research on governmental problems for all the institutions of higher learning in the state. It serves as the staff agency for the State Council of Public Administration, consisting of the governor, the presidents of two institutions of higher learning, the heads of the state league of cities and the state planning agency, and several leading state officials and private citizens. The Council considers broadly the research needs of the state and local governments,

and the Bureau attempts to find the persons best qualified to conduct needed research studies, and to aid in making the necessary arrangements for such studies. The results, which have been notable to date, will be watched with interest by other states.

7. It has been stated frequently that relatively few political scientists are utilized by government in a technical or specialist capacity. Relatively few political scientists have been called to Washington within recent years, particularly in comparison with the number who have been called from economics, law, business administration, statistics, and other professions. While many political scientists participate in state and local government, as their replies to this committee indicate, in many instances they participate as citizens rather than as technicians.

General Observations. The public service activities of political scientists and their relations with public officials, as reported to the committee, are impressive. It may be questioned, however, whether political scientists are sufficiently in touch with the phenomena which they study and teach. Too often they study government only through the use of books and the printed word, and thus cannot bring to their research or teaching the lively sense of reality and the grasp of the important issues which come only through first-hand contacts.

The value of effective relations between political scientists and public officials is increasingly recognized and substantial progress is being made, often in the face of serious difficulties. In many communities, public officials, for a variety of reasons, are not inclined to seek the aid of political scientists. Frequently they have little appreciation of the services which political scientists can render. In communities with low standards of public service—particularly those which are dominated by strong political machines—the services of the political scientist, as well as of scientists in other fields, are seldom sought or welcomed. Yet many political scientists have been able to overcome these difficulties and to work effectively with "practical politicians." Too often political scientists have an erroneous opinion about the character of public officials, which would be dispelled by closer association. Those who regard public officials as generally political, incompetent and frequently corrupt would be enlightened by greater acquaintance.

Another and important difficulty which stands in the way of more effective relations between political scientists and public officials is the time required to maintain such relationships. While a reasonable amount of public service activities is of value to the political scientist in his teaching, it is easy for outside interests to absorb his energies to the neglect of his real job. Many political scientists wisely refuse to engage in less significant public service activities, which are often time-consuming and of little value to the student of government. The first obligation of the

teacher, of course, is his teaching, and public service activities have to be considered with reference to that fact. There are very real limitations upon how much outside activity political scientists may undertake during the academic year. Without exception, they welcome research assignments within their special interests which may be carried on during the summer period or while they are on leave of absence.

In many smaller institutions, and some larger ones, teaching loads and administrative duties are so heavy that they leave the instructor little time for outside activities or research, and a few institutions frown on public service activities because of excessive caution against involvement in politics. Yet even under these circumstances quite a number of political scientists are rendering significant public service, and, fortunately, many institutions are coming to recognize the importance of such public service activities. There ought to be greater recognition of the fact that the political scientist must devote a considerable amount of time to public service activities in order to be a good teacher, with a corresponding adjustment of his teaching and administrative duties. In many, if not most, institutions, little or no provision is made for clerical assistance to the political science instructor, such as would relieve him of routine tasks and give him greater time and freedom for outside activities. This situation has been relieved to some extent by the assistance of N.Y.A. students, but these usually are untrained and may be given only the simplest tasks.

One of the greatest handicaps to more effective participation by political scientists in public affairs has been the undue emphasis upon production of published articles and books. The route to advancement too often lies solely through publication, with the result that frequently publication is looked upon as an end in itself, and research is considered, not in terms of the advancement of knowledge or the solution of important governmental problems, but rather as an opportunity to turn out an article or a book. Some of the most significant researches in political science today are being published as public documents or reports without credit to the author, and some result, not in publication, but in a brief confidential report or memorandum to the responsible public official. Research of this character, as well as important public services not of a research character, should be recognized as of at least equal value to the usual type of publication.

It may be noted that the opportunities and values of relations with public officials do not apply alike to all political scientists. The student of international relations establishes contacts with the State Department and other divisions concerned with our foreign relations, as well as the foreign services of other countries, but would have perhaps little to gain by relationships with local officials. The political scientist specializing in public administration, legislation, or judicial administration has ample

opportunity to study his subject at first hand. The student of political theory or of public opinion and propaganda may feel that he has little to gain by close relations with public officials and through public service activities, but this position is hardly supported by the facts. Several political scientists specializing in political theory have made great contributions to government and thereby greatly enriched their own research and teaching. Political theory, after all, need not be studied in a vacuum, or exclusively by the use of the printed word. Every branch of political science has a contribution to make, and no political scientist should regard his field as one apart from actual government.

Recommendations: A special committee should be set up to study and to make recommendations concerning university and college training in political science. [This recommendation was adopted by the Executive Council at its meeting of December 26, 1940.] Such a committee should inquire whether the present training is well adapted to the needs of students (1) as a part of a liberal education, (2) for persons who plan to enter the public service, and (3) as training for research in governmental problems. The last comprehensive investigation by the American Political Science Association of the subject of college and university instruction in political science was conducted by the Haines committee authorized at the annual meeting of 1911 and reporting in subsequent years.[2] In consideration of the great changes which have taken place in government since 1911, the increase in the number of university graduates who are entering the public service, the increase in the number of students who are enrolled in political science courses, and the fact that a large number of them seek training which would be of value to them in the public service, your committee believes that the time is ripe for a comprehensive study of university and college training in political science.

2. *Political science departments should follow a deliberate policy of rendering public service to governments within their areas, and conducting research studies of significant local governmental problems.* Activities of this type, when kept within reasonable bounds, should not be regarded as in competition with the duties of teaching and writing, but as an essential part of the equipment of any teacher of political science, necessary for his teaching as well as his research.

3. *Political science departments should promote and encourage research studies involving field work, particularly comparative studies covering a number of governmental units.* Research upon current problems of interest to

[2] For the reports, see this REVIEW, Supplement, Vol. VIII, Feb., 1914, pp. 249–70; and Vol. IX, May, 1915, pp. 353–74. Professors William B. Munro and Earl Crecraft made a survey of certain aspects of the teaching of political science for the Committee on Policy in 1929, but this survey did not deal with the content of political science instruction.

public officials is essential to the establishment of closer relations between political scientists and such officials, and should constitute the basis upon which political science departments seek to relate their work more effectively to the governments within their area. Field work is of great importance in government research, and too often is neglected because the expenditures involved are beyond the means of the individual instructor. The value of field studies lies not only in the results secured, but also in the insight and understanding of governmental processes and in the contacts which they afford the investigator. Political scientists should be more energetic in seeking funds for research studies of this type.

4. *In making new appointments, political science departments should give consideration not only to the scholarship and teaching qualifications of candidates under consideration, but also to their interest and aptitude for contacts with government officials.* In the past, perhaps too great a premium has been placed upon scholarship, with the result that frequently the unusually studious but retiring individual has been favored over the less studious person with greater aptitude for public contacts.

5. *In making promotions, political science departments should take into account the research and public service activities of members of their staffs.* At present, publication is frequently the most important consideration in awarding promotions. Similar recognition should be accorded to research and to outstanding administrative experience in governmental agencies. In several fields, political scientists might well be expected normally to have had at least a year's experience in a research or administrative capacity within a governmental agency as a condition of promotion. It would also be desirable for political science departments to urge and even to insist that the candidate for the doctorate have had a year of actual governmental or research experience before receiving the degree. This requirement would constitute a valuable part of the training for the doctorate, and is perhaps of greater importance for the future teacher than for students who plan to enter the public service.

6. *Political science departments should seek in the following and other ways to establish effective and coöperative relations with public officials:* (a) Public officials should be invited to the university campus for institutes, conferences, and to serve as special lecturers, consultants, advisers, and in other capacities. Within recent years, Harvard University has made extensive use of public officials as non-resident consultants, each participating for a brief time in graduate seminars conducted in the Graduate School of Public Administration. The conferences which were held on university campuses several years ago under a special grant to the American Political Science Association were of great value because they brought together political scientists and men in public life to discuss public questions of current importance. A number of these universities have continued to

hold such conferences regularly from year to year, with excellent results. Experience indicates that public officials are glad to accept invitations to visit the university campus, and conferences of this kind can be conducted with little or no financial assistance. Institutes and short courses for public officials and public employees are also a means of establishing desirable contacts and relations, as well as being an important means of serving the government of the area. A number of universities conduct such institutes, notably the University of Southern California, which had over 3,000 public officials and employees enrolled in the 1940 session.

(b) Political scientists should attend important meetings and conventions of public officials wherever possible, particularly of such associations as state leagues of cities, conferences of civil service officials, planning officials, and similar groups. More universities should recognize the value of such contacts and provide for the relatively small traveling expenses involved, particularly for junior staff members.

(c) Political scientists should make greater effort to become acquainted with public officials in the community, including field and regional officers of the federal government. The opportunity and value of such associations unfortunately are usually overlooked. In several large urban centers, informal associations of public officials and university faculty members—political scientists and others—have been formed within recent years to bring about greater acquaintance and interchange of ideas. In Los Angeles such a group was formed about ten years ago under the title of "Government Administration Group," and it meets monthly for dinner and an evening of discussion. It has proved so popular that a second chapter has had to be formed. Undoubtedly these associations have aided in the establishment of the unusually close relations between political scientists and public officials in the Los Angeles area. A similar group has been formed recently at Berkeley, California, and probably others exist elsewhere. There are several groups of this type in Washington, D.C., and with the formation of local chapters of the American Society for Public Administration, similar opportunities will be provided in other communities.

Political science departments should make a special point of aiding new members to become acquainted with officials in the community, and to pave the way for them to be called upon to make significant studies of local governmental problems. Without such assistance, the young instructor who is in the period of life which should be most productive of research because of the absence of administrative duties and other time-consuming responsibilities, is apt to find little outlet for his research abilities.

7. *It is recommended that the American Political Science Association meet regularly in annual convention with the American Society for Public Administration.* Joint meetings will afford opportunities for greater acquaint-

ance between officials and political scientists and permit the interchange of ideas and joint discussion of problems. In local or regional meetings of political scientists, it would be highly desirable to invite public officials to attend, and occasionally to hold joint sessions with the local branch of the Society for Public Administration, where such exists, or other organizations composed largely of persons in the public service.

8. *The most effective use of political scientists, as well as other social scientists, requires a research organization constantly securing information about governmental problems and research needs, and matching these needs with university resources.* A research organization is useful for the discovery of research needs, to plan and program the research, to secure necessary approval or "clearance" of research projects, and finally to publish and follow up after the completion of the project. Many of the difficulties and mistakes which attend and frequently defeat research endeavors are avoided by the guidance and assistance of an agency of this kind. This function is being carried out at present to a greater or lesser extent in a number of states. In many universities, research bureaus or committees perform this function, but too often serve only the institutions with which they are connected. In most instances, government research bureaus within the universities confine their activities to the research and service performed by their own staff members, and do not adequately meet the need for a central agency for planning and stimulating research, and marshalling the research facilities of the university for the services of the state.

9. *Political scientists should make themselves available for research and consultation assignments.* It is desirable for political scientists to take appropriate civil service examinations when they are offered in order to be available for temporary research undertakings, for frequently governmental departments are unable to utilize their services unless they can be appointed from a civil service register. Political scientists are urged to have their names listed on the personnel service maintained by the Public Administration Clearing House at Chicago, which is widely used for research and administrative positions by governmental and other public bodies throughout the country. Relatively few political scientists are making use of this service. A special register of political scientists is being prepared by the United States Civil Service Commission for use by the federal government.

10. *Political science departments could with profit establish closer relations with other departments in the university or college.* Schools of business administration, law, agriculture, engineering, forestry, public health, education, social service administration, and other departments or schools which train for the public service often enjoy close relations with public officials. These departments have something to contribute to the study

of government, and in turn might make greater use of the services of political scientists.

Conclusion. There has been great progress in the development of effective relations between public officials and political scientists during the last quarter of a century, and we confidently expect even greater progress in the future. More and more, the political scientist is called upon by government for technical and professional assistance, for important services upon official boards and agencies, for research upon the problems confronting government, and for other significant services. In an increasing number of cases, political scientists have been in the vanguard of important governmental reforms. Political science departments should recognize their obligation to serve the state, and adopt a definite policy of facilitating and encouraging their staff members to engage in research and other public service activities for which they have a special competence.

JOSEPH P. HARRIS, *et al.*

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Committees of the American Political Science Association thus far appointed for the year 1941 include the following:

1. *Committee on Program for the 37th Annual Meeting:* Francis G. Wilson (chairman), Earl DeLong, W. Brooke Graves, Harold H. Sprout, O. Douglas Weeks.
2. *Committee on Local Arrangements:* Phillips Bradley (chairman); numerous representatives of educational institutions in New York City.
3. *Committee to Nominate Officers for 1942:* Robert R. Wilson (chairman), Charles G. Haines, Roscoe C. Martin, Roger H. Wells, Harold Zink.
4. *Committee to Consider Revision of the Constitution and By-laws of the Association:* Robert E. Cushman (chairman), Walter F. Dodd, John A. Fairlie, William O. Farber, J. A. C. Grant, H. C. Nixon.
5. *Committee on Electoral Procedure of the Association:* Francis W. Coker (chairman), Edward S. Corwin, J. R. Hayden, Roscoe C. Martin, R. G. McKelvey, Louise Overacker, Robert R. Wilson.
6. *Committee on Relations with Local and Regional Societies:* Harvey Walker (chairman), D. F. Fleming, W. Brooke Graves, T. V. Kalijarvi, Schuyler C. Wallace, Herbert Wright, Francis G. Wilson.
7. *Committee on Endowment* (same as last year, with addition of Joseph P. Chamberlain. William Anderson, chairman).
8. *Committee on the Personnel Service* (same as last year. Harvey Walker, chairman).
9. *Committee on Publication of Proceedings* (same as last year. W. Brooke Graves, chairman).
10. *Committee on Public Law:* Oliver P. Field (chairman), Marshall E. Dimock, Charles G. Haines, James Hart, Charles S. Hyneman.
11. *Committee on Legislation and Legislative Methods, with Special Reference to Congress:* George B. Galloway (chairman), Marshall E. Dimock, Meyer Jacobstein, Benjamin B. Wallace, Schuyler C. Wallace.
12. *Committee on the Publication of Election Statistics:* W. Reed West (chairman), Thomas S. Barclay, Harold G. Gosnell, E. E. Schattschneider, Catheryn Seckler-Hudson.
13. *Committee on the Social Studies:* Phillips Bradley (chairman), Roscoe L. Ashley, Russell M. Cooper, Robert H. Connery, Henrietta Fernitz, O. Garfield Jones, David W. Knepper, Lane W. Lancaster, Ralph E. Page, Harrison C. Thomas, Howard White.

Reprints of Professor Robert E. Cushman's article in this issue of the REVIEW may be obtained at thirty cents each by applying to Professor Kenneth Colegrove, Northwestern University, Evanston, Ill.

The University of Chicago announces the appointment of Dr. Philip W. Ireland, now instructor in government at Harvard University, as assistant professor of political science. Dr. Ireland will give courses in the field of international law and relations.

On February 12–14, Mr. C. J. Hambro, president of the Norwegian Storting, delivered a series of three lectures on the University of Illinois campus under the auspices of the department of political science. The subjects were: "Why Neutrality Failed," "The Status of Norway Today," and "International Coöperation and the Future."

Professor Leonard D. White, of the University of Chicago, is chairman of a newly appointed committee on the history of American administrative institutions, established under the sponsorship of the Public Administration Committee of the Social Science Research Council.

Dean Isidor Loeb retired from his post at Washington University last July and has since become director of the Wohl Foundation, established by a St. Louis business man for charitable and educational purposes.

Professor Charles C. Rohlfing, of the University of Pennsylvania, is a member of a committeee of five citizens appointed by the governor of Pennsylvania to investigate the Philadelphia Registration Commission. The committee has designated Dr. John P. Horlacher, assistant professor of public administration at the University, as director of its staff of investigators, with an analysis of the city's permanent registration system as one of his principal tasks.

Since the death of Professor Robert C. Brooks, Professor J. Roland Pennock has been acting head of the department of political science at Swarthmore College, and Professor Brooks' courses have been in charge of Professor Pennock, Mrs. Frances Reinhold Fussell, Professor R. H. Wells of Bryn Mawr College, and Professor Bradford West of the University of Pennsylvania.

Professor Ralston Hayden, of the University of Michigan, will exchange with Professor Charles E. Martin, of the University of Washington, for the summer quarter of 1941. Professor Hayden will conduct a special seminar at Seattle on the United States and the Philippines.

Professor William B. Munro has been appointed to the newly-established Edward S. Harkness professorship of history and government at the California Institute of Technology. He was also recently elected a member of the Board of Overseers of Harvard University, and is chairman of the Overseers' committee on the Graduate School of Public Administration at that institution.

On the basis of a project for a history of American political parties as shaped by social forces (especially interest groups), Dr. W. E. Binkley, professor of political science at Ohio Northern University, has been awarded the Alfred A. Knopf fellowship in history for 1941, carrying a stipend of $1,200.

The second series of lectures presented under the auspices of the Claremont Colleges embraced three addresses, January 23–29, by Professor Edward S. Corwin, of Princeton University, on the general subject, "Constitutional Revolution, Limited." The titles of the individual lectures were: "Judicial Interpretation of the Constitution," "The New Deal and the Supreme Court," and "Changing Concepts." The lectures will shortly be published in book form.

While on sabbatical leave from Amherst College during the second semester, Professor Karl Loewenstein is visiting Brazil, Argentina, and other South American countries.

Professor Schuyler Wallace, of Columbia University, will teach in the coming summer session of the Utah State Agricultural College.

While on leave from Bowdoin College, Professor Orren C. Hormell is employed in Washington as a consultant to the National Resources Planning Board, with special attention to enabling acts and ordinances for emergency defense areas.

At the University of Michigan, Dr. Harlow J. Heneman has been advanced to an associate professorship.

Professor Matthew C. Mitchell, chairman of the department of political science and sociology at Brown University, is on sabbatical leave during the current semester, and Professor Leland M. Goodrich is serving in his stead.

Dr. Edward H. Litchfield, of Brown University, has accepted a position as assistant director of employment and training in the executive department of the Panama Canal Zone. His work at Brown has been taken over for the second semester by Mr. Guy Howard Dodge, of Harvard University.

Professor Charles S. Hyneman, of Louisiana State University, served recently as chairman of a committee appointed by the newly created Louisiana state civil service commission to conduct an examination for the position of director of personnel.

Dr. Pierre Cot, formerly professor of law at the University of Rennes and minister of air in French cabinets in 1933–34 and 1936–38, has been appointed visiting lecturer in the department of government at Yale University for the second term of the current academic year.

Professor Graham H. Stuart, of Stanford University, is one of a group of ten editors and scholars sent by the Carnegie Endowment for International Peace to South America in March and April. The purpose of the

visit has been to enable these men to increase their knowledge of Latin America, to exchange information and opinions with colleagues there, and to bring back to the United States the impressions gained, with a view to advancing good will between the Americas.

Mr. Walter L. Riley, recently of the University of Washington, has accepted a teaching post at Whitman College beginning in February of this year.

Dr. Harry Johnstone, who received his degree in political science last summer at the University of Washington, has been appointed training consultant to the director of personnel in the War Department at Washington.

Mr. Richard Van Wagenen, of Stanford University, has been appointed instructor at Yale University for the year 1941–42.

Dr. O. Glenn Stahl has resigned from the Tennessee Valley Authority to accept a position as assistant chief of classification in the Federal Security Agency.

Professor Egbert S. Wengert, of Wayne University, has accepted appointment to the Carter Glass chair of government at Sweet Briar College and will have the initial rank of associate professor.

Professor S. D. Myres, Jr., will return in May to his post at the Southern Methodist University after a three-months' trip to South America.

Dr. David M. French, formerly of the University of Michigan and at one time a Rhodes Scholar, is now teaching in the department of history and political science at Mills College.

Dr. John Brown Mason, associate professor of social science, Fresno State College, Fresno, California, has been appointed director of the California Adult Education Workshop to be held at Mills College, June 22 to July 13. The theme will be "Adult Education and National Defense," and there will be close coöperation with the Institute of International Relations to be held on the Mills campus during the first ten days of the Workshop period. In addition to acting as director, Dr. Mason will offer work on "Adult Education in International Relations."

Professor Alpheus T. Mason, of Princeton University, is preparing the authorized biography of Mr. Justice Louis D. Brandeis and desires to solicit letters, personal reminiscences, anecdotes, photographs, and other pertinent materials. Inasmuch as after 1915 practically all of Justice Brandeis' letters were written in long-hand, copies in the hands of recipients are the only ones available. All materials furnished Professor Mason

will be returned if desired, and full credit will be given in the completed biography.

President Edward A. Fitzpatrick, of Mount Mary College, Milwaukee, is writing a biography of Dr. Charles McCarthy, organizer and for many years director of the Wisconsin Legislative Reference Bureau. He would appreciate receiving letters and other sorts of materials relevant to Dr. McCarthy and his activities.

George Washington University has established a special graduate curriculum leading to the degree of master of arts in public personnel administration, and plans are being formulated for such a curriculum leading to the doctor's degree. The matter is in charge of a university committee, headed by Dr. Mitchell Dreese, dean of summer sessions, and advised by an outside committee of personnel experts.

A new monthly publication of interest to political scientists in the field of municipal government and administration is the *Boletin de la Comision Panamericana de Cooperacion Intermunicipal*, launched under the editorship of Dr. Carlos M. Moran and published in Havana.

During the winter quarter at the University of Chicago, four lectures were given by graduate students in the political science department as a part of the work of the Social Science Division. The lecturers and their subjects were: Charles Bream, "The Arms Trade"; Klaus Knorr, "British Colonial Policy"; Robert Lochner, "Geopolitik"; and M. Harvey Sherman, "The American Governor."

The third annual meeting of the Mid-Western Political Science Conference will be held at Potawatomi Inn, Pokagon State Park, Indiana, May 16–18. The committee on program consists of Professors Francis R. Aumann, Ohio State University, chairman; Amry Vandenbosch, University of Kentucky; Llewellyn Pfankuchen, University of Wisconsin; and Arnold J. Lien, Washington University. Professor Francis G. Wilson, University of Illinois, is chairman of the conference, and Professor Harold Zink, DePauw University, secretary-treasurer.

An Institute on Inter-American Relations and the Mid-West was held at the University of Kansas City, January 10–12. Representatives of the U. S. Department of Commerce, the Department of Agriculture, and nine Mid-Western colleges and universities participated. Dr. Hans Morgenthau, assistant professor of law and political science, Dr. Lynn I. Perrigo, assistant professor of history, and Dr. Bruce Trimble, head of the history department, were active in organizing the Institute, and Mr. Clarence Senior, lecturer on contemporary Mexican civilization, served as director.

A recent three-session conference at Louisiana State University on "Organizing Louisiana for Democratic Government" was closed with an address by former Congressman T. V. Smith of Illinois. During March 17–19, Dr. Paul van Zeeland, former prime minister of Belgium, delivered a lecture on the current European situation and conducted a conference on European affairs. The lectures on the Edward Douglas White Foundation were delivered in April by President Robert M. Hutchins, of the University of Chicago.

On January 31–February 1, 1941, a Southwide Conference on the National Defense Program and State Finance met at the University of Alabama. Sponsored jointly by the University's Bureau of Public Administration, the State Department of Revenue, and the Federation of Tax Administrators, the Conference drew some fifty attendants, including key state finance officers, prominent citizens, and university officials from eight of the Southern states.

The fifth semi-annual meeting of the Metropolitan Political Science Association was held at Hunter College on March 7, with fifty-five members and guests attending. Dr. George Gallup, director of the American Institute of Public Opinion, and Dr. Henry Durant, director of the British Institute of Public Opinion, addressed the meeting on the procedures and problems of public opinion polls. Professor George Graham, of Princeton University, was elected chairman for the academic year 1941–42, succeeding Professor Phillips Bradley, of Queens College.

The Summer Institute for Social Progress customarily held at Wellesley College will extend this year from July 5 to 19, and will have as its theme "Strengthening America at Home and Abroad." Round tables will be featured, and Mr. Mordecai Ezekiel, economic adviser to the U. S. Department of Agriculture, will head a list of leaders including several distinguished teachers of political science and economics. Further information may be had from G. L. Osgood, secretary, 14 West Elm Ave., Wallaston, Mass.

A Committee on Research in the History of American Administrative Institutions, created by the Committee on Public Administration of the Social Science Research Council, held its first meeting in Washington on March 1–2, and initiated a program for stimulating and promoting studies in its field. Members of the committee are Leonard D. White (chairman), University of Chicago; John M. Gaus, University of Wisconsin; Julius Goebel, Jr., Columbia University Law School; James Hart, University of Virginia; Lloyd M. Short, University of Minnesota; Roy Nichols, University of Pennsylvania; and Solon J. Buck, The National Archives.

Robert C. Brooks, 1874–1941. In the hearts of most men there is some "Mr. Chips" whose image is cherished throughout life. The universal tenderness of the professor for his students becomes in the course of events their universal tenderness for him. So it is that the passing of Dr. Robert C. Brooks is "Goodbye, Mr. Chips" to an infinite host of men and women who will treasure his faith and sustained interest in those recurring significant moments which renew one's inspiration. Whatever immortality is secured to us must be of this kind, and the greatness of an individual is surely measured by the number of spiritual lamps which he lights in the lives of his fellow-beings. Only one who has shared Dr. Brooks' office for nine delightful years knows the true greatness of this beloved teacher and knows how futile it is to try to impart it through the formality of words.

"To leave life before one knows it—that is the real tragedy. It makes the old seem like misers, hoarding stuff infinitely more precious than gold." No word of mine, or indeed of anyone, can better indicate Dr. Brooks' love of life than the foregoing marginal note written in his own distinctive hand on a memorandum concerning the sudden death of one of his students. The buoyant way in which he used to swing across the campus, the might of his pen, the humor of his mind, the joy in his voice, the sympathy in his heart, were the evidences of a *sui generic* vitality which left its challenge on more individuals than most of us are ever privileged to know. The thing which he gave to others above all else was an attitude of mind. There was no student too humble for his personal attention—no person too lowly for his praise—no cause too insignificant for his consideration. The wry urbanity with which we were all familiar, characterized by such a remark as "Congratulations on your full professorship—some are fuller than others," gave a zest to the commonplace, a sparkle to a compliment, a tang to a friendly jibe.

In his career as a political scientist, I happen to know that he cherished most the presidency of the American Political Science Association and an honorary degree from the University of Berne. I cannot forget the tears in his eyes when a Swiss professor said on the latter occasion, "You know that we Swiss think of Lord Bryce and you as our two greatest friends." He was grateful for those honors—and truly humble in their contemplation.

Robert Clarkson Brooks was born in Piqua, Ohio, February 7, 1874. Despite the fact, however, that he was a native of Ohio, he always preferred to think of himself as indigenous to the soil of the Hoosiers. He was graduated from Indiana University in 1896 and went thence to Cornell for graduate work, being there later awarded the President White travelling fellowship, which took him to the universities of Halle and Berlin. Many a subsequent college lecture was lightened and brightened by reference to those German university days, which were so rich in experience

to the men of his generation who were privileged to have them. When he returned from abroad, he served as an instructor at Cornell from 1899 to 1904, after which he held the Joseph Wharton professorship of economics at Swarthmore College from 1904 to 1908. The University of Cincinnati called him to a full professorship in political science in 1908, but in 1912 he returned to Swarthmore, never again to leave it except for occasional summer school courses elsewhere. In the United States, he is best known for his classic text, *Political Parties and Electoral Problems*. Abroad, he is best known for his *Government and Politics of Switzerland*.

Apart from the man as teacher, writer, friend, there are special causes which he championed that are the better for his contribution. We shall long remember his devotion to liberalism, his faith in democracy, his support of the Democratic party, his pride in little Switzerland, his courage in denouncing dictatorships, his passionate belief in the moral dignity of mankind. There is no adequate tribute for a man of his stature. These few simple words record all too impersonally and coldly a warm and vital grandeur that was Robert Clarkson Brooks.—FRANCES REINHOLD FUSSELL.

The Dynamics of War and Revolution. By Lawrence Dennis. (New York: Weekly Foreign Letter. 1940. Pp. xxxi, 259. $3.00.)

Lawrence Dennis is a brilliant writer and a master in the coining of sharply ironical formulas. His work should impress even those who realize to what extent it is indebted to the ideas of Oswald Spengler. Spengler's influence can be observed in Dennis' antithesis between money and blood, his characterization of socialism—he rejects utopian socialism and accepts a national socialism based upon discipline and heroism—and particularly in his belief in the necessary, fatalistic development of history and human society. Dennis could have concluded his work with the same quotation which Spengler uses as the last sentence of his *Decline of the West: Ducunt fata volentem, nolentem trahunt.* The fundamental thesis of Dennis' book is the radical negation of democracy, if one understands by democracy a régime based upon individual liberties and upon the toleration of minorities. ("Democracy . . . may be identified by the phrases parliamentary government, liberalism, a government of checks and balances—all of these terms meaning, among other things, a governmental system in which the rights of minorities to oppose the majority in certain approved ways is respected," p. xix.) The author indentifies democracy with a régime based upon the masses, and it is for him self-evident that the masses are incompetent and irrational. They do not know the real meaning of their wishes and demands. Therefore, every régime dependent upon them is unstable and weak.

This fundamental view is connected with an interpretation of present and modern history which, as Dennis repeats again and again, is opposed to predominant opinion. Democracy and Capitalism appear as necessarily connected. Capitalism is the expression of a particular historical period, a result of certain temporary causes (frontier, population increase, belief in unlimited progress, at least as long as the system works, but which breaks down today). Capitalism is linked with the British Empire, whose power is based upon the exploitation of monopolies under the cover of moral slogans and allegedly universal economic principles like free trade. Capitalistic democracy is today doomed. The élite, who brought it into being, is today stagnant and reactionary, and no longer dynamic. Therefore it is unable to ensure order and public welfare, as the existence of mass unemployment demonstrates.

Where are we going today? According to Dennis, the historical development of our time will necessarily result in a national socialistic order. Not profit, but power, will be of decisive importance. The whole earth will be dominated by empires based upon national socialism. Dennis believes that there is greater chance of a survival of the French Empire than of

the continuance of the British Empire (his book was written before the collapse of the Third Republic). Pyramid-building will be characteristic of the New Order—the organization of public works, meaningless from the point of view of individual profit, but securing work for everybody and expressing the unity and activity of the community.

The war of today is, in the eyes of Dennis, a nonsensical one. The Democracies proved their incapacity after the war of 1914–18. They did not prevent Germany's rise. Dennis believes further that the incompetent élite ruling the United States will provoke her participation in the fight between the "Haves" and the "Have nots." He announces that he will do everything to help the United States to win this war if it comes: "I shall be delighted to serve my country with its war propaganda. I am just as ready to lie as to kill for my country. Any ethic which does not put a man's country above all else is a stench in my nostrils" (p. xiv). But he knows that any attempt to rescue the doomed British Empire will not prevent, but only accelerate, the fatal, national revolution.

Who will dominate the United States of the future? Dennis castigates in the most vehement words the incapacity of the business men, but gives very few positive hints as to the composition of the new élite. He mentions that only Americans of Protestant descent and English stock can carry out the necessary change, and he states that the unity of the American nation was disturbed by Russian and South European immigration. Dennis does not believe that an agreeable future is around the corner. Wars will always be necessary to make sacrifices and heroism the characteristic virtues.

Some critical remarks may well conclude this analysis. Dennis addresses his book to the élite, believing that the masses are dominated by emotions and are unable to understand cool, unimpassioned thinking. But his book is built around over-simplified slogans. The correspondence of this system of slogans to reality is stated, but not proved, by its opposition to beliefs and opinions, which are today regarded as self-evident. The Anglo-Saxon democracies cannot be simply characterized as systems of ideologies covering economic exploitation and the rule of money. Law is not only the expression of force. The term power is used by Dennis in so broad a sense that it works as a universal key explaining everything and making cautious investigation unnecessary. It is also an over-simplification if Dennis characterizes the English policy toward Germany as based upon the belief that Germany is inferior and has to be always held in submission.

The dominant trend in Dennis' book is the violent dislike of pseudo-moralism and utopianism. But one cannot fail to note that Dennis' opinions are imposed upon him by his enemies. He simply expresses the opposite views, which, of course, cannot replace cool and truly realistic

analysis. One can himself be unrealistic, excited, and emotional even if one accuses his opponent of being unrealistic, excited, and emotional.

WALDEMAR GURIAN.

University of Notre Dame.

The Clash of Political Ideals. By ALBERT R. CHANDLER (New York: Appleton-Century Company. 1940. Pp. xvii, 273. $2.00).

Where Stands Democracy? By MEMBERS OF THE FABIAN SOCIETY (London: Macmillan and Company. 1940. Pp. viii, 152. 3s. 6d.).

Both of these volumes belong to the vast mass of present-day published material dealing with the conflicting political ideas in our troubled world. The first is a source-book of quotations, ranging from Thucydides to John Dewey, on democracy, communism, and the totalitarian state. The second is a series of essays, based on lectures delivered under the auspices of the Fabian Society, and dealing primarily with the situation in England, especially its war aims and its war-time organization, and with the rival economic and political doctrines striving for supremacy in Europe.

Professor Chandler states that he intends his book to be objective and impartial, allowing the leaders of conflicting movements to speak for themselves. The question of selection, of apportionment of space, and of editorial comment is, therefore, of prime importance. Over half the volume is given to statements of democratic ideals, including well-chosen extracts from Milton, Locke, Jefferson, *The Federalist*, Washington, Mill, Lincoln, Walt Whitman, and Herbert Hoover. Communist theory is given fifty pages and includes the Communist Manifesto, selections from the writings of Lenin and Stalin, and a part of the constitution of the U.S.S.R. The theory of Italian Fascism is presented through part of Mussolini's article in the *Enciclopedia Italiana*. Nazi theory is inadequately stated in a very brief paraphrase of a few pages from Hitler's *Mein Kampf*, with special emphasis on his doctrine of Aryan racial supremacy. A brief chapter on "The Spirit of Japan" and the encyclical of Pope Pius XI on "Reconstruction of the Social Order" conclude the volume.

To this method of evaluating contemporary political ideas and problems there is one serious objection. Political systems can be judged more fairly and accurately by their actual operation than by the statement of ideals made by their founders, since no system ever works exactly as hoped or expected. Communist ideals on paper are very different from communism in Russia; and democracy today is by no means what Jefferson hoped it might be, either in its structure or in the scope of its activities.

In the Fabian Society essays, H. J. Laski writes on "Government in War-time"; Hamilton Fyfe, on "New Powers of Propaganda and Repression"; Leonard Barnes, on "The Uprising of Colonial Peoples"; R. H. S.

Crossman, on "National and Democratic Socialism"; G. D. H. Cole, on "The Decline of Capitalism"; and K. Zilliacus, on "War and Preparations for Peace."

This volume makes no pretense at objective impartiality, but is a frank statement of the authors' belief in socialism and an attempt to plead its cause. Its general point of view is that in the present world there are four contestants for supremacy: fascism, communism, capitalistic democracy, and democratic socialism. The authors wish to combine the economic theory of communism with the political methods of democracy, and are much concerned with the preservation of civil liberties. Just how a system of state socialism can be politically operated so as to remain democratic and free is not made clear. The authors seem to be more interested in economic doctrines than in political realities, and more concerned over international socialism and the British labor movement than over the fate of England and the Empire.

RAYMOND G. GETTELL.

University of California.

The Old Deal and the New. BY CHARLES A. BEARD AND GEORGE H. E. SMITH. (New York: The Macmillan Company. 1940. Pp. 294. $2.00.)

This little volume is the fourth by the same authors in a series dealing with the government and politics of the United States during the Franklin D. Roosevelt administration. The first, bearing the almost exultant title of *The Future Comes*, was a review of the eight months following March 4, 1933; the latest one covers the entire eight years. After a volume proclaiming the arrival of the future, the reader might expect the final one to turn its attention chiefly to an examination of the brand-new social order for which the country had so long been in labor. And this is what has been done, although the authors make it plain that the new order in 1940 appears to have little claim to finality.

The body of the volume is taken up with a summary of the policies and acts of the present Administration, accompanied by an appraisal of the chief ones; all of which is preceded by two chapters summarizing and characterizing the economic and political régime upon which the curtain was rung down on March, 4, 1933. For purposes of exposition and discussion, the material is divided into five classes: finance and investment, business and industry, agriculture, relief and unemployment, and foreign policy. In each division, the chief elements of the problem are stated, the remedial statutes outlined, and the results of their administration analyzed and appraised. Any scholar who has labored with the complex statutes and administrative practices adopted by the federal government during the past eight years must be impressed with the skill and clarity with which their basic facts have been marshalled and the causal relationships set

forth in the small compass of this volume. Important omissions there are, of course, as for instance a unified examination of the question of public finance; and the conclusions, while maintaining a high tone of objectivity, grow normally out of the basic assumptions found in the well-known writings of the senior member of the firm.

The authors well summarize the trends in America since 1875 which culminated in the "revolution" of 1933. "Merciless and driving are the forces of mechanics and economics under the propulsion of blind greed and passionate purpose; the less they are understood the more devastating to civilization are the consequences, the more difficult it will be to bring them under the control of the state, the community, humanity" (p. 44). As to the period before 1933, only by falsification and distortion could it be reduced "to an 'order' or 'system' which was subject to merely a temporary disarrangement and could be 'recovered' or 'restored' by measures of legislation. . . ." The essence of the New Deal, therefore, at least in its earlier phases, was state action to establish a social order in closer conformity with the technological and economic facts of the day.

The N.R.A. was an opportunity for American business leaders "to come abreast of the powerful forces that were rapidly changing the world about them;" but after its failure, the President and his entourage never again proposed a "coöperative, concerted plan for industrial order and progress." Thereafter, their approach was a confusing mixture of "appeasement, cajolery, pleading, trading, exhortation, and coercion;" which measures, one gathers, are not well-adapted to the building of a sound "future." Much good legislation in detached sectors followed, but the only scheme of a comprehensive nature for sustaining the American fabric was the spending program. Particularly, the gigantic spending program for national defense offered "a possible escape from all problems" (p. 173).

Some of the conclusions reached by the authors are not of an optimistic nature. Many of the automatic checks on the federal government have disappeared; a new and great political machine of government employees, reliefers, and contractors has come into being; and foreign policy has moved from one of American continentalism to a new type of "isolation" in which the United States has no support except from Great Britain. The growing debt and costs of government point to a "serious explosion" unless there is a great jump in the production of consumers' goods, for the attainment of which the New Deal has "no machinery or policy." More serious than all is noted a profound change in national character revealed by the "easy, almost abject, acceptance" of the views lately handed out by the Administration on foreign affairs.

All in all, the reader is left with the feeling that America is again adrift, as before 1933, without adequate plans or charted course. Perhaps the

situation is not so serious as it may appear. The isolated pieces of reform instituted by the Roosevelt Administration may be parts of a figure whose design no eye has yet seen. That there is more than a little futility in attempting to make over society "with a little black liquid," as de Maistre asserted, is doubtless true; but can anyone doubt that social planning through government will not be more often tried, and with a greater prospect of success, in the future than in the past? After all, the nation started out with a "design for living," the Constitution of 1787; and it was Alexander Hamilton who pointed out that to Americans had been reserved the first opportunity to demonstrate that good government can be established by "reflection and choice," rather than by being left to "accident and force."

EARL L. SHOUP.

Western Reserve University.

The Legislative Way of Life. BY T. V. SMITH. (Chicago: University of Chicago Press. Pp. 101. $1.50).

This volume, comprising lectures originally given at Westminster College, emerges as a timely book. Even in periods less catastrophic, American legislative assemblies have not been subjected sufficiently to scholarly and scientific investigations. However, at a time when totalitarian governments thumb their noses at legislatures, and at a time when unprecedented crises in the few remaining democracies result in enormous delegation of powers to the executive, it is well that a student of the American way should remind us that from understanding and not disdain of our representatives "will flow whatever improvement is possible for the legislative core of the democratic state."

To Professor Smith, tolerance and extension of skill and ability to meet people half-way are the elemental ingredients of the legislative way of life, recognizing always that it is built upon inescapable conflict. "The beginning of collective wisdom is for each man to discover that he is not God. To discover that is to see why legislatures are necessary and to learn how they can be fruitful."

In a setting of eloquence and wit, our philosopher-politician, drawing heavily upon his own rich practical experience, reviews the personnel of the forty-nine legislative assemblies. The reviewer agrees with the author that there are too few women in our legislative assemblies (less than 150 at any one time among 7,500 state legislators, eight among 531 in the 1940 session of Congress), and that as a group, women legislators are both less power-hungry and less money-mad than are men. However, if Professor Smith is at all serious when he says that "there ought to be as many women as men . . . if the principle that agreement across conflict lines cannot be adequate or just without actual representation of all major

diversity," then he is carrying the principle of equality of representation to an absurd length.

Professor Smith, as a practicing politician who fathered the legislative council in his own state of Illinois, does well to stress the importance of this scientific device in attracting better legislative personnel; "for, by thus having the facts when they are needed where they are needed, the legislative way of life corrects its own shortcomings and presents a more united front than ever before to totalitarian pretenses of superiority."

In the third and last chapter, the author considers the direct and indirect products of our legislatures. To the direct products, as seen in the thousands of laws passed annually, he adds his appraisal of such indirect products as outer peace, inner freedom, and institutional beauty. The latter is "as old as Plato and as conservative as the democratic process of accommodation." To the poet-author, institutional beauty represents that final fruit of the legislative way of life which can breed at one end an enthusiasm for the rough-and-tumble of machine politics and at the other the subtlety of Lincoln's harmony of ancient discrepancies in democratic theory—crowned by the good sportsmanship produced by our system.

Professor Smith, in this volume, has made an eloquent defense of compromise as characteristic of the legislative way of life. He concludes: "True, when seen from the shining cliffs of perfection, the legislative process of compromise appears shoddy indeed. But when seen from some concentration camp of the only alternative way of life, the compromises of legislation appear but another name for what we call civilization and even revere as Christian forbearance."

BELLE ZELLER.

Brooklyn College.

The Changing American Legal System; Some Selected Phases. By FRANCIS R. AUMANN. (Columbus: Ohio State University Press. 1940. Pp. x, 289).

Professor Aumann traces the development of the American legal system from its beginnings through 1935. He confesses that the study does not attempt to "explore all of the materials in areas with which it is concerned." Nevertheless, one is impressed with the wealth of material analyzed and the excellent documentation of the subject-matter.

The book is divided into four parts as follows: Part I (three chapters), "The Period of Colonial Beginnings, 1608–1776"; Part II (five chapters), "The Formative Period of American Law, 1776–1865"; Part III (one chapter), "Some Problems of Growth and Development during the Period of Maturity of American Law, 1865–1900"; Part IV (one chapter), "Some Problems of Growth and Development in the Present American Legal System, 1900–1935."

Progress in the law and legal system has been attained only after a

struggle—or series of struggles. In the colonial period, the heterogeneous population, the frontier conditions, and the prominence of the church in political affairs made it difficult to establish any formal legal system at all. In fact, in some of the colonies lawyers were about as popular as is a "fifth columnist" today at a meeting of the Dies Committee. Later when it was generally accepted that there was a place in our society for lawyers, judges, and a legal system, other questions remained to be settled. Whether the common or civil law would be basic, unconstitutionality or judicial supremacy, and codification of the law were among the many problems faced in the development of the legal system.

Professor Aumann's attitude toward the legal system as it has developed is a friendly one—some may think too friendly. Perhaps this attitude would explain the questionable conclusion: "After that decision [Marbury v. Madison], the doctrine [of unconstitutionality] was accepted quite generally by state courts, state legislatures, and the people generally" (p. 191). The footnote to the sentence and the discussion on pages 160 and 182 seem to contradict the statement. A person less friendly toward the legal or judicial system might have considered the post-Civil War period simply as a continuation of the "struggle for power" between the legislative and judicial branches, with, of course, an increase in the volume of litigation due to the war and changing economic conditions.

The author apparently fails to see any political motives behind the actions of courts or the defenders of the status quo in the legal system, but frequently those advocating changes are referred to as Jeffersonians, radicals, or "hostile to the courts for partisan reasons," etc.

"For those . . . who are interested in the American legal system in a general way, . . . it is hoped that this study will further a better appreciation of the problems which have attended its growth." So says the author in his preface; and the reviewer believes, whether one agrees entirely with his thesis, that Professor Aumann has accomplished this purpose.

P. S. Sikes.

Indiana University.

The Immigration and Naturalization Service. The Secretary of Labor's Committee on Administrative Procedure. (Washington, D. C.: Department of Labor. 1940. Pp. 159. Mimeographed.)

On September 23, 1938, the Secretary of Labor appointed a committee to study immigration practice and procedure and to make recommendations for the improvement of the Immigration and Naturalization Service of the United States Department of Labor. After an intensive appraisal, the committee, consisting of Marshall E. Dimock, Henry M. Hart, and John McIntire, released its findings on May 17, 1940. The Service was transferred to the Department of Justice in June, 1940, but the com-

mittee's basic recommendations were not thereby made inapplicable.

The committee's investigation was restricted to an examination and evaluation of existing procedures of admission and deportation of aliens. Procedural aspects of the naturalization functions of the Immigration and Naturalization Service were not included in the survey. In an introductory chapter of the report is sketched the historical development of federal policy toward aliens which culminated in the present drastic exclusion and deportation laws. In succeeding chapters are discussed the steps in the exclusion and deportation processes and the problems connected with them; the legal position of the alien in immigration proceedings; field office practice and procedure; central office practice and procedure; the form and structure of the governing law; improvement in central office organization; and relation of personnel to improved practice and procedure. The committee's recommendations are summarized in a concluding chapter.

With few exceptions, the committee found the work of the special boards of inquiry in exclusion hearings to be one of the least satisfactory aspects of the Service. Important differences in enforcement within and between localities and lack of a standardized form of examination were attributed to defective administrative supervision and control and to unfit personnel. In deportation proceedings, aspects of investigation and arrest were found to entail possibilities of abuse; opportunities for fair hearing and the requirements of due process were inadequate.

The committee's recommendations included suggestions for the development of administrative supervision of a character to eliminate the great differences in enforcement policy; modification of deportation procedure so as "to provide a maximum assurance that each case will receive full and careful consideration"; reorganization of the central office to strengthen internal operating efficiency; preparation of an administrative manual; and improvement in recruitment policy and the development of a personnel training program.

LUELLA GETTYS.

Baltimore, Maryland.

Public Relief, 1929–1939. By JOSEPHINE C. BROWN. (New York: Henry Holt and Company. 1940. Pp. xx, 524. $3.50.)

Miss Brown has undertaken and successfully completed a task that many have long felt to be urgent, and we now have a most readable, well documented, general but comprehensive account of the public relief policy of the last decade. The account is, in the main, chronological; the central problems and policy issues are discussed from a background of the four periods into which Miss Brown has divided her book. The short introductory section covers the years prior to 1929, and includes a discussion of the

concept of public responsibility for relief programs, and an analysis of the now well perceived deficiencies of state and local policy and administration of that long ago period.

Part II is devoted to the period which extended from the early state and federal fumblings in 1929 and 1930 to the loan program established by the Emergency Relief and Construction Act of 1932. Miss Brown critically evaluates the shortcomings and the successes of this program, and there is some discussion of the state administrative and policy changes made necessary by the R.F.C. administration of the act. The longest section of the book, Part III, is devoted to the Federal Emergency Relief program, and to the several incidental and supplemental lines of action during the years 1933 to 1935. Full consideration is given to both policy determination and administrative action as it affected governmental operations at the federal and state levels, and there is a lengthy treatment of such issues as direct versus work relief, relief in cash or in kind, and the means used to determine eligibility for relief.

The author has chosen the optimistic title, "The Beginning of a Permanent Program," for the fourth and last part of the book. The permanency which she notes is partly that centering around the whole Social Security program, and partly that resulting from a clearer understanding as to the respective responsibilities of the federal and state governments. The retrogressions which transpired at the state-local level after this decision was made are fully noted, but the author also stresses the gains carried over from the days when a fuller federal responsibility obtained. The tables, charts, and graphs liberally interspersed throughout the book are well selected, are used with care and precision, and add to the expository treatment. A lengthy appendix and a comprehensive, topically arranged bibliography add to the value of the book.

The ambitious scope of Miss Brown's volume is both its strength and its weakness. Her aim was to give us a complete but general account, and this she has done admirably. With this as her goal, she could not easily emphasize all of those special aspects of the development of welfare policy in which the scholar in the fields of federal theory, pressure politics, public finance, and public administration is interested. Federal grants to the states are discussed with little consideration of the administrative difficulties encountered when an attempt is made to specify some formula on which these grants may be based. In the sections dealing with the political pressure groups seeking federal financial aid, the emphasis is on the demands and programs of social welfare experts and workers, and there is almost no mention of the pressures exerted by state and local governments and their officers. One can agree with Miss Brown that relief standards have been and still are low, but these low standards are in part based on financial considerations. A full appraisal of these standards cannot be

made without relating them to tax programs, indebtedness loads, and the demands of alarmed and highly vocal tax-payers' organizations. One notes with no little surprise that there is almost no material in this book on the financing of relief, other than statistical data on the amounts appropriated and spent, or tables on average expenditures per case. Similarly, the discussion relating to federal-state administrative relations leaves much untouched. However, these and other related problems have been and will continue to be discussed in the more specialized monographs. In the meantime, we now have an excellent general account.

A. N. CHRISTENSEN.

University of Minnesota.

The Constitution of England from Queen Victoria to George VI. By ARTHUR BERRIEDALE KEITH. Two volumes. (London: Macmillan and Company. 1940. Pp. lv, 485; ix, 515. $7.50.)

This addition to Professor Keith's long list of works on British dominion and home government may be compared with several other recent books: his own latest revision of Ridge's *Constitutional Law*, R. K. Smellie's *Hundred Years of English Government*, and W. Ivor Jennings' recent *Cabinet Government* and *Parliament*. All of these deal mainly with the century since the Reform Act of 1832; but, while Smellie traces the historical development in three main periods, the others are systematic treatments of institutions, in which the emphasis is on the more recent working of the British system.

In comparison with Jennings' books, Keith gives more attention to legal problems and less to non-legal practices, though the latter are by no means ignored. Jennings deals with the cabinet and Parliament at much greater length; while Keith deals more fully with other governmental agencies outside the scope of Jennings' special studies—such as the crown, the administrative services, the judiciary, and the rights of subjects and status of aliens.

The greater emphasis on legal problems is indicated by a table of about 500 cases, which is, however, only about one-half of the number cited in the author's *Constitutional Law*. This difference is to a considerable degree explained by the greater attention given in the *Constitutional Law* to the judiciary and to the British Empire. The latter subject, indeed, is here only referred to in a brief chapter on imperial affairs. Local government is deliberately omitted from the present work. On the other hand, greater attention is given to the crown, the cabinet, Parliament, the executive departments, and party organization than in the *Constitutional Law*.

While published in 1940, the main text does not deal with events after 1938. The preface, dated July 29, 1939, notes developments up to that

time; and a postscript covers the next few months, including legislation after the beginning of the war.

As usual, Professor Keith does not hesitate to express his opinion in incisive language, and he finds occasion to criticize actions by all political parties. He is, however, emphatic in opposing proposals that the Labor party, if it comes to power, should proceed to make drastic changes in the economic system under an Emergency Act, to be passed by putting pressure on the king to create peers without waiting for the two-year delay under the Parliament Act of 1911. On the whole, however, he believes that the pressure of foreign affairs would operate to prevent such a constitutional crisis.

JOHN A. FAIRLIE.

University of Illinois.

Suicide of a Democracy. BY HEINZ POL. (New York: Reynal and Hitchcock. 1940. Pp. xii, 296. $2.00.)

Before 1933, Herr Pol was a journalist devoting his able pen to leftist periodicals, an activity which brought him, after Hitler's accession to power, years of exile first in Prague (if this reviewer remembers correctly) and later in Paris. After the outbreak of the current war, he had the misfortune to gain a first-hand knowledge of various French concentration camps. One chapter of his book is a vividly documented account of the stupid, inhuman, and infamous treatment the anti-Hitler refugees were subjected to by the French. For his version of why the Third Republic collapsed, Herr Pol is well qualified both by his parallel experience with the fall of the Weimar Republic and by a considerable journalistic *flair* which enabled him to turn newspaper material, substantiated rumors, and indirect information to good advantage. According to his narrative, the fall of France should be attributed to the undermining activities of outright fascist groups such as the *Cagoulards*, to Bonnet and the Fifth Columnists of native and German extraction, to the techniques of anti-Semitism and separatism—the latter decidedly overrated—and, last but not least, to the generally pacifist and defeatist attitude of the French masses. Needless to say, the pernicious "spirit of the Maginot line" comes in for a fair share in the contributing causes.

The best chapter is the one on Georges Mandel, whom destiny evidently had groomed to be the Gambetta of 1940, and who still may play his rôle in the resurrection of the true France provided that the French bootlickers of Hitler let him survive. Very little, however, of the information offered is actually new; even minor details which to the author seem revelations were known in this country, not to speak of one who had occasion to read European newspapers. Much of the material is based on conjecture and hear-say from second and third sources. How should Herr Pol know

what has been said between Daladier and Bonnet (p. 87, 96) or between Mandel and Bonnet (p. 171)? Important figures such as Doutry or Sieburg are not even mentioned. Herr Pol had no access to the councils of the mighty; thus we are at least mercifully spared the vainglorious charlataneries of Jules Romains. On the other hand, Herr Pol's presentation bears no comparison with André Maurois' report, which is based on authentic inside knowledge. This may explain why the book, besides containing a considerable number of plain inaccuracies and untenable statements, tends to magnify secondary causes and to minimize what appears to be the primary issue of the French *débâcle*, namely, the technical and moral degeneration of the French military caste. Not the politicians failed France—they were as bad or as good as before and after 1914—but her General Staff, with which no civilian government, whatever its political color, dared to interfere. Sedan 1940 closely resembles Sedan 1871, and there was, under the same token, Jena and Auerstädt, and the military disaster of 1918 on the other side of the Rhine.

Even with such reservations, this account by an observant journalist is useful when read with a proper sense of proportion. As a source of objective information, it is of little value.

KARL LOEWENSTEIN.

Amherst College.

The United States in World Affairs, 1939. By WHITNEY H. SHEPARDSON AND WILLIAM O. SCROGGS. (New York: Harper and Brothers. 1940. Pp. xiv, 420. $3.00.)

This is the latest of the annual volumes by Shepardson and Scroggs published under the sponsorship of the Council on Foreign Relations. Uniform in plan and format with its immediate predecessors, the book succeeds remarkably well in combining the topical and chronological approaches without either excessive repetition or distortion of continuity. This is, in itself, an achievement of no mean importance—a thing which will be attested by all who have attempted a similar task.

Since American foreign policy during 1939 was essentially passive, drifting with the rushing stream of events which carried Europe over the brink of disaster, this volume is focussed rather less upon America and more upon Europe. Indeed, one feels that the authors were so absorbed in the European disaster that they were forced to remind themselves time and again that their primary task was to appraise the American reaction to European disaster and not to chronicle the details of the disaster itself. So extensive is the treatment of European affairs that one can use the volume, not alone as a chronicle of American policy, but also as a convenient reference book for world happenings during that fateful year.

The inclusion of the customary chronicle of important events in other countries is a further aid in this connection.

The authors of these volumes have never set themselves up as impartial chroniclers jotting down the happenings of the year with all the impersonality of a time-clock. They have always asserted their right to inject personal and critical observations into the record, and they have always written their accounts in a breezy journalese showing little taint of that mustiness which is the stylistic disease of the academic historian. The virtues and defects of this policy were never more apparent than in this volume. There are passages of excellent writing; there are other passages in which the prevalence of colloquial expression is a source of weakness rather than of strength. Also, there are many people who will disagree with the authors in their unsparing criticism of the things and persons that they dislike. Thus, this reviewer, at any rate, objects strongly to a summarization of the record of the French Popular Front in the following terms: "In the autumn of 1938, after experiments with currency devaluation and with an ideological social program which failed to produce the promised results, France returned to the prosaic task of promoting recovery by economy and hard work."

Fortunately, the virtues of the volume far outweigh these defects. But as American policy in a war-torn world continues to encounter greater and greater strains and tensions, the authors may face a situation in which they will be forced to decide whether they are actually writing contemporary history or tracts for the times. Both are valuable, but not in combination.

GRAYSON L. KIRK.

Columbia University.

The War: First Year. BY EDGAR MCINNIS. With a Foreword by Raymond Gram Swing. (New York: Oxford University Press. 1940. Pp. xvi, 312. Maps. $1.50.)

Chronology of Failure: The Last Days of the French Republic. BY HAMILTON FISH ARMSTRONG. (New York: The Macmillan Company. 1940. Pp. viii, 202. $1.50.)

The chronicling of events in flux calls for extraordinary fortitude on the part of authors. So swiftly flow the currents of contemporary history that it is difficult for its recorders to find firm footing. Happily, both of the authors under review have built, though differently, from rock-bottom consideration of essential facts.

Solid ground underlies McInnis' praiseworthy effort at interpretation, which appears with the sponsorship, though not the responsibility, of the Canadian Institute of International Affairs. To him, the incentive period

leading to war began with the advent of Hitler to power on January 30, 1933. With swift, deft strokes, he covers the "Background and Origin" of the war, interpreting the complex series of events leading up to its outbreak and portraying clearly and precisely the totalitarian point of view as well as the dual British policy of appeasement and rearmament. In four fact-packed chapters, McInnis describes the initial military and economic situation, then details the remaining months of 1939, the first three of 1940, the period from April to June 15, and finally from June 15 through August. There is excellent summary, fair comprehensiveness of view—although the Far East engages the author's attention only marginally—and a wide range of verified, carefully organized economic, naval, military, and political data. The volume poignantly portrays for citizens of democratic states the consequences of inaction and defeat which it is still within their power to avert. For the American reader, Raymond Gram Swing furnishes an excellent foreword, sharply attacking the cultivated incredulity of our citizenry, the deliberate dulling of meaning and refusal to understand the pattern of events by persons overwrought by a "propaganda" complex.

Chronology of Failure represents an initial effort to disengage, from the *mélange* of contradictory reports and rumors, the actual structure and sequence of events in the history-making "thirty days' war" that brought the Third French Republic to an end. From a perspective born of close personal observation and an opportunity to check official records, the distinguished editor of *Foreign Affairs* portrays with objectivity and dispassionateness the successive phases of the inexorable drama of defeat.

Summarizing the successes and failures of the Allies before the catastrophic tenth of May, Armstrong highlights the crucial defects in Allied defense policy—the failure to come to an understanding with the Belgians and Dutch, and to force Mussolini from the equivocal position in which his threats to, and supplies from, the Allies continually grew. France and England are revealed to have been, on the eve of the crisis, equally in the valley of indecision—as regards Finland, the Near East, Turkey, for example—and deeply internally divided. There follows the chiseled narrative of disaster, in which England prepares for real war while France collapses. Armstrong's keen sense of the relevant makes him include events, no matter how geographically remote, when there are direct and causally connected repercussions. Thus the utterances—and timing—of Hitler and Lindbergh (e.g., pp. 98, 102) are laconically put in juxtaposition. The positive reactions in American foreign policy are also carefully brought into focus. Compellingly, tragically, the pages devoted to "Peace" (Chapter IX) record the emergence first of the aged authoritarian Pétain, then of the sinister Laval, to reorient the fortunes of beaten France. "The Moving Finger writes . . . "

Why did France fall? For Armstrong, the evidence points to a failure to

coördinate foreign and military policy; too passive and negative a conception of defense; insufficient material; deep-rooted social and political divisions diminishing the national will to resistance; a false sense of security—"a Maginot Line in the Mind"—to which must be added the superior resources, organization, and striking power of the enemy. The lessons for America are made clarion clear. The basic failures chronicled by Armstrong are dual—failure of political imagination to foresee inescapable consequences, and failure of national will to act in time. To this reviewer the chronicler's incisive analyses appear both penetrating and admonitory. It is to be hoped that they will not prove retrospectively to have been undecipherable Handwriting on the Wall.

MALBONE W. GRAHAM.

University of California at Los Angeles.

The Economic Causes of War. BY LIONEL ROBBINS. (London: Jonathan Cape. 1940. Pp. 12, 124. $1.35.)

Although he approaches the problem of war from a wholly different angle, Lionel Robbins reaches much the same conclusion as Bryce Wood in regard to its cause and cure. The problem of war, he writes, can be solved only by important limitations upon "independent sovereignty" in a genuine federation of states (p. 104).

Robbins' approach is that of the classical economist. The body of the book is devoted to a critical examination of the various theories which have attributed primary importance to the economic causes of war. The interpretations of the Marxian doctrine of imperialism by Rosa Luxemburg, J. A. Hobson, Bukharin, Kautsky, Lenin, and Marx himself are examined and found wanting. Robbins finds no logical reason for imputing to capitalism the inevitable tendency toward under-consumption in the home market, leading to a necessity for expansion in foreign or colonial markets. Nor does he agree with Lenin that capitalism necessarily tends toward monopolistic controls which acquire political power and induce the various governments to embark upon conflicting imperialistic ventures to monopolize sources of raw materials, markets, and opportunities for investment in undeveloped areas. While there is nothing illogical about this argument, historical studies indicate that it is based upon wholly false assumptions in regard to the mentality of financiers and investors. Case studies have indicated that such persons have more frequently been unwilling tools of imperialistically-minded governments than the aggressive controllers of such governments (p. 57).

The author's constructive analysis of the causes of war reduces economic phenomena to a minor rôle. He does not go the whole way with R. G. Hawtrey in holding that wars arise from struggles for power and that economic resources are of significance only as they contribute to

political power (pp. 63–64). He recognizes that power may sometimes be wanted to achieve economic purposes such as augmentation of the welfare of a class or of a nation, and that when much of the world has gone in for economic self-sufficiency, even states not so disposed may be justified in embarking upon similar policies in defense. In such a situation of general obstruction of trade and capital, he recognizes that territorial expansion may sometimes become urgent for certain states. This analysis, however, only emphasizes that the root cause of war lies in "the existence of independent national sovereignties. Not capitalism, but the anarchic political organization of the world, is the root disease of our civilization" (p. 99).

The author's scholarly criticism of widely propagandized theories about the causes of war should be read by publicists and historians, who have been far more free in attributing war to economic causes than have the economists.

In an interesting appendix, the author discusses the meaning of economic causation, with the somewhat unsatisfactory conclusion that an economic objective is a "way of securing means of satisfying ends in general" (p. 117). The same might equally be said of a political objective. While wealth may be a means to power, political power may be a means to wealth. The meaning of these words requires further analysis.

QUINCY WRIGHT.

University of Chicago.

Majority Rule in International Organization; A Study of the Trend from Unanimity to Majority Decision. By CROMWELL A. RICHES. (Baltimore: The Johns Hopkins Press. 1940. Pp. x, 322. $2.75.)

In 1933, Dr. Cromwell Riches published an illuminating study entitled *The Unanimity Rule and the League of Nations.* That study "revealed a rather astonishing number of ingenious devices by which the League organs, especially the Assembly, had escaped the rigors of the restrictive unanimity rule, in many cases approximating majority decision."

In the present volume, Dr. Riches presents the results of several years' study of voting procedures in other international organizations, particularly the public international unions. Although this book is designedly more specialized than those of Woolf, Reinsch, and Sayre, no one with any pretense to knowledge of the public international unions can henceforth afford to neglect it.

Dr. Riches has conveniently classified his treatment of majority rule into the following chapters: "Unanimity in Conferences of Public Unions," "Majority Vote in Conferences Exercising Legislative Powers," "Conferences Acting *Ad Referendum*," "Bodies Having Powers of Sanction," "Decision in International Bodies Controlling Territory," "International

River Commissions" (two chapters), and "Administrative and Technical Commissions." There follows an excellent chapter, "From Equality to Qualitative Representation," and an informing and thoughtful summary.

Majority action in some form, the author writes, has been much more widely accepted in international organizations than is generally appreciated. A strict application of the unanimity rule would have prevented much of what has been achieved by the public international unions. In actual practice, therefore, devices have been found to temper the unions' sterile tendencies.

The book is well written, scholarly, and an important contribution to our knowledge of international procedural law and practice.

HERBERT W. BRIGGS.

Cornell University.

Peaceful Change and the Colonial Problem. By BRYCE WOOD. (New York: Columbia University Press. 1940. Pp. 161. $2.00.)

Students of international organization will find in this monograph much food for thought. Although it was prepared before the outbreak of the war in September, 1939, Dr. Wood's discussion is timely and helpful. It is concerned with the problem of peaceful change, with colonial readjustments as the central theme. Chapters of the book deal with these topics: "The Nature of Peaceful Change," "The Limits of Peaceful Change," "British Reactions to German [Colonial] Claims," and "Preparation for Peaceful Change."

After pointing out the importance of peaceful change in a dynamic world society, the author emphasizes the necessity of proper timing and of optimum concessions. Using various historical examples, he refutes the theory that territorial modifications are impossible without offending the honor or interests of the states which make them. There are, however, no fixed limits to peaceful change. Rather, the limits are flexible, and are determined by fluctuations in confidence and by the ability of states to coerce each other.

Unfortunately, as the author makes clear, concessions can be made best at the time when they seem least necessary. For example, England might have done much in 1926 to clear up the colonial problem with Germany. But the Berlin government was then relatively weak *vis-à-vis* London. By the time when Germany had grown strong enough to make her demands heard, Hitler had become so blatant as to arouse fears among the British leaders. While for a time before Munich, some of these leaders were willing to reopen the colonial question, in a sense of fair play and in recognition of the psychological (though not economic) aspects of the problem, they were soon disillusioned and came to regard the matter as no longer debatable.

The author is concerned here with only one segment of the general prob-

lem of peaceful change. He recognizes that in 1939 the colonial issue was not a basic cause of friction between Germany and England. But in exploring this issue he throws much light on the more fundamental question of how nations can deliberately readjust their interests, attitudes, and policies so as to live together in peace.

S. D. MYRES, JR.

Southern Methodist University.

Toward a New Order of Sea Power. BY HAROLD AND MARGARET SPROUT. (Princeton: Princeton University Press. 1940. Pp. xiii, 332. $3.75.)

During 1939, the Sprouts published a domestic survey of the American Navy from its inception through 1918, under the title of *The Rise of American Naval Power*. Its sequel, the present volume, offers a broader view of naval affairs by placing American policies in a world-wide setting. *Toward a New Order of Sea Power* takes as its theme global naval problems which led to, and were dealt with by, the Conference on the Limitation of Armament held in Washington, D. C., during 1921 and 1922. In tracing the background for the Conference, the Sprouts open with the 1890's, characterized by strong British control over the world's chief water routes. They then list some of the elements which tended to destroy British supremacy at sea, including the expansion of the American and Japanese navies and the development of submarines and airplanes. Political efforts to cope with these changes, through the Peace Conference of 1919, the Anglo-Japanese Alliance, and other channels are examined to provide a setting for the Washington Conference.

Approximately half of the volume is devoted to the Conference itself. Preparations, the diverse interests of its members, the attitude of the press and other groups toward its proceedings, efforts to win concessions or reach compromises, and the final results of the Conference are passed in review. Though portions of this material have been covered elsewhere, in treatises on the Conference, the Sprouts have improved on the conventional presentation in two particulars. They have incorporated the results of interviews and of the examination of unpublished diaries of participants in the Conference. They have also treated the submarine and airplane phases of the Conference in the light of the current importance of those instruments, rather than on the basis of the blurred vision of the Conference's contemporaries.

Once their chronological account reaches the year 1922, the Sprouts quickly halt their labors. The publisher hints at the reason, by remarking on the jacket that "so great was the volume of material gathered by the Sprouts that another book will be necessary to bring the study to the present time."

Would such a sequel represent a drastic change in the general outlook of

the present volume? The reviewer is inclined to reply in the negative. The Sprouts were writing of the Conference after the naval building limitations it had adopted had been abandoned and a new arms race was under way. Possibly with this development in mind, the Sprouts avoid any one-sided, sentimental attitude toward the Conference that might be upset by further research covering the last twenty years. Likewise, the Sprouts comment on the extent and nature of an American fleet capable of defending the United States against even the full force of the British fleet, in their discussion of the basis for naval limitation in 1922, but handle the issue in a manner that reminds one of some of the latest comments on the world emergency. The Sprouts here present us with "ancient history" to be sure, but ancient history written in the light of modern knowledge and current problems.

In covering their subject, the authors proceed in a very well organized vein, employing a lucid style, and providing extensive documentation. The volume should lend itself to very effective use as assigned reading for the limited period it covers. The reviewer hopes that this period may be extended in the near future by an equally valuable sequel.

WILLIAM BEARD.

University of Wisconsin.

Studies in Legal Terminology. By ERWIN HEXNER. (Chapel Hill: The University of North Carolina Press. 1941. Pp. vi, 150. $1.50.)

Only one of the six essays included in this volume deals with the sort of narrow technical problem which the title might suggest to the average reader. This is Essay III, entitled "Legal Rules Manifested in Human Language." Here there is a summary of the different ways in which legal propositions may be manifested ("Sign Vehicles"), and a brief reference to the technical problem of interpretation. The book as a whole deals in "fragmentary and simple manner" (as the author himself says) with certain key concepts in general jurisprudence. It is not expressly stated, but it is evident from the concepts selected for treatment, that the inspiration for Dr. Hexner's study is the appearance of political and legal totalitarianism in Europe. It is also a fair inference, although the language of controversy is studiously avoided, that the author is attempting a re-statement of what remains an essentially positivist position so as to lend as little aid and comfort to the dictators as possible. In doing this, he is not always, in the opinion of the reviewer, successful; but the possibilities suggested are ingenious and worthy of serious consideration.

Essay I ("Rules of Social Conduct") identifies legal rules as belonging to a separate rule system—one based upon arbitrarily created means of influencing human conduct. The feeling for justice figures here as merely one of the conditions limiting arbitrariness in a purely factual and external

sense. In Essay II ("Legal Rules in a Legal System"), the concept of a legal rule is made dependent upon its being part of a *system* of rules in order to reject the legality of a postulated single rule conferring the whole power over human conduct on one man. Dr. Hexner seems to assume that this excludes despotism as a legal order. As a matter of fact, it only excludes an unlimited discretion in the despot to proceed from case to case as his fancy of the moment dictates. If the discretion conferred is to make *rules*, delegation will secure a *system* of rules without, however, substantially reducing the practical possibilities of despotism. It is quite true that if the necessity for a system of rules is interpreted to require the elimination of all discretion in the magistrate, this would constitute a serious handicap to arbitrary administration. But it would also constitute a handicap to good administration. In short, a reliance upon the systematic character of the legal order to exclude despotism may easily result in throwing out the baby with the bath.

In Essay IV ("Some Elements of the Concept Legal System"), the internal characteristics of the legal system are explored as the author returns to the problem of totalitarian "law." Every legal rule (except the constitutional premise which must be conceived metajuristically) must be "linked" with preceding legal rules. In other words, it must be set in a jurisdictional context so that its validity may always be tested by reference to the authority of its maker. Then comes the most significant requirement: "The concept of what today is called a legal system implies the ability of the individual, whose conduct directly or indirectly is determined by the rule, to ascertain whether or not the rule, which presents itself as a legal one, is (by being covered directly or indirectly by the constitution) a *legal* rule" (pp. 59–60). This proposition derives no obvious support from positivist premises. It constitutes an oblique reference to private rights as a limitation on the institution of government. But in the mouth of one who recognizes no distinction between government and law, it is difficult to see how private rights can be other than a technique of government control. Had Dr. Hexner started his terminological analysis with an investigation into the relationship between rights and law, the problem would have been faced directly—with salutary effect for the ensuing argument, if not for the author's peace of mind.

The following two essays on "Court Systems as Determined by Specific Legal Orders" and "Legal Security," respectively, limn a variety of topics. Separation of powers, the rule of law, law versus administration, and judicial review are touched upon suggestively. On the whole, the treatment is orthodox positivist-analytical, although the author's desire to recognize institutional distinctions not readily cognizable from this point of view crops up from time to time. Thus he recognizes that finality of judicial decision is not equivalent to judicial absolutism and that acts of a supreme

appellate tribunal outside of its jurisdiction are not legal acts, even if put into effect by the law-enforcing machine. It is not clear, however, how law can be distinguished from what the courts, or any other agency, effectively say it is, assuming a positivist basis for law. Indeed, the author concludes his observations on this point with a reference to Professor Kocourek which concedes the ultimate factual supremacy of whatever agency of government exercises the power without successful factual interference by another agency of the same government (p. 97).

The fact that these essays have inspired the reviewer to so much critical comment testifies to the vitality of the problems discussed. It is not intended as a reflection upon the work itself.

KENNETH C. COLE.

University of Washington.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Case studies of local party machines inevitably contribute to an understanding of the democratic process. Students of politics will be grateful, therefore, to Professor Dayton D. McKean for his report on one of the most conspicuous of these organizations in *The Boss; the Hague Machine in Action* (Houghton Mifflin Co., pp. xviii, 279, $3.00). Bringing together material not heretofore easily available to scholars, Professor McKean has, as an incident to his main purpose, produced a portrait of one of the least lovely and winsome personalities in the American political scene, Mayor Frank Hague of Jersey City. The Hudson county machine and its master obviously deserve the attention paid them in this useful and informative volume, since they possess the keys to power in one of the important states of the American Union. The author has drawn heavily on rich materials turned up in a series of legislative investigations of the organization, testimony taken in a number of judicial proceedings involving Mr. Hague, the knowledge and experience of a number of veteran newspaper men, plus some personal investigations of his own. His book depends for its interest almost exclusively on the intrinsic fascination of the material itself. In terms of this material, the author manages to provide an answer to most of the questions that the reader would be apt to ask about a local party machine—its organization, personnel, finances, discipline, etc. The most disturbing tendency reported is the tendency of the Hague machine to become a social system, "the infiltration of groups and associations" which might become centers of resistance. This technique is unpleasantly totalitarian in its implications. While no one will be surprised to learn that the Republican opposition in Jersey City is a captive of the dominant machine, it is clear that the efforts of the Hague organization to neutralize

opposition seem to have been carried to extraordinary lengths in the group of communities which, the author notes, get an exclusively posterior view of the Statue of Liberty. The facts plus the interpretations assembled in this book add up to a tremendous indictment of the Hague machine. It is to be regretted, however, that Professor McKean did not make a more definite attempt to formulate a theory of machine politics upon the basis of his facts.—E. E. SCHATTSCHNEIDER.

In the third edition of his *The American Problem of Government* (F. S. Crofts and Co., pp. ix, 596, $3.75), Professor Chester C. Maxey follows the general method used in the second edition, organization and content remaining unchanged, although there has been considerable general revision and some chapters have been completely rewritten. The resulting elimination of some hundred pages provides an unusually compact and concise commentary on American government. Professor Maxey continues to emphasize the importance of "political fundamentals," devoting the first third of the volume to a discussion of the individual and society, the evolution of the state, political doctrines, political forces, and contemporary political systems, followed by an analysis of the American constitutional system, the structural and functional features of American government, and a discussion of democracy in the United States. The remainder of the book is divided between a survey of governmental processes and a discussion of present-day problems. The book is well organized, and the factual information clearly and simply presented, particularly in the sections dealing with civil liberties and with the growth of governmental functions. However, in view of the author's insistence upon stressing "principles, processes, and problems," rather than forms and mechanisms, it is to be regretted that more space is not devoted to the dynamics of American politics and to the institutional nature of the Constitution. The impact of social, economic, and ideological forces on the governmental process is hinted at, but not sufficiently underlined. In view of the debates of recent years over the growth of administrative power, the discussion of quasi-legislative and quasi-judicial agencies and of judicial control over the administrative process is surprisingly inadequate. The same may be said of many other important topics—the relation of judicial philosophy to judicial decision, particularly in the constitutional field; the committee system and seniority as determinants of legislation; the uses and abuses of the senatorial filibuster; the pressure group and the lobbyist as integral parts of the legislative process. Such omissions present a serious problem when the text is the main source of student information. However, where adequate background material is available from instructor and library, the volume provides an excellent guide-book for the exploration of our governmental mysteries.—THEODORE H. SKINNER.

The increasing conviction of political scientists that the interdepartmental waters where government and economics meet deserve exploration receives substantial support from Donald C. Blaisdell's *Government and Agriculture* (Farrar and Rinehart, pp. xiii, 217, $1.00). The principal merit of the volume is that it brings within reasonable compass a description of all the federal agricultural programs, and makes this well-written description available at a surprisingly low price. The first chapter describes the evidences and causes of agriculture's maladjustment with the rest of the nation's economy. A second chapter discusses in general terms the frequency of the federal government's "responses" to agriculture, and the influence of farmers' organizations in stimulating these responses. Succeeding pages discuss production control and the ever-normal granary; marketing services, controls, and expansion programs; the causes of and remedies for soil erosion; agricultural research and its implications of increased productivity, larger farms, commercialized farming, and industrial use of farm products; and security for economically depressed farm groups. The concluding sections discuss matters of particular interest to political scientists—democratic referenda, farmer-committees, farm coöperatives, soil conservation districts, and the administrative organization and operation of the Department of Agriculture. Dr. Blaisdell was for four years administrative assistant to M. L. Wilson, Under Secretary of Agriculture. His book, however, reveals no secrets, and, except for a very few pages (e.g., pp. 184–185), could have been written by an outsider with access to the more obvious published documents. This fact is perhaps more of a tribute to the splendid series of informative and readable annual reports of the Department of Agriculture and the Agricultural Adjustment Administration than it is a reflection on the author. The emphasis upon what the Department of Agriculture is doing means that too little attention is paid to the real and alleged flaws in the theory and working of the various programs. This neglect of the critical approach is the only serious defect to be found in the book. Dr. Blaisdell has been unusually successful in describing all the significant work of the Department of Agriculture.—JAMES W. FESLER.

During 1940, Stone, Price, and Stone summarized in one volume the conclusions growing out of surveys of forty-eight council-manager cities. This coöperative undertaking was accomplished by a group of scholars in conjunction with the Committee on Public Administration of the Social Science Research Council. Professors Edward F. Dow and Orren C. Hormell have published the results of their survey of one of these cities in a monograph entitled *City Manager Government in Portland, Maine* (University of Maine Studies, Second Series, No. 52, pp. v, 119). Other studies which have grown out of this general appraisal of council-manager

government have tended to emphasize the diverse political, organizational, and administrative aspects which appear under the blanket term, "council-manager government." Portland, Maine, as Dow and Hormell indicate, is unusually individualistic in the lack of administrative integration under the manager and in the subjection of the manager's appointments to the necessity of confirmation by the council. A peculiar feature is the absence of a mayor, at least, in title. The chairman of the council serves as ceremonial head. In view of traditional practices and the organizational pattern, it is not surprising to find the council using a number of committees, meddling in administrative details, forcing department heads to realize how important it is "to play ball with the council." Other handicaps under which the manager labors are the lack of an integrated finance department, the absence of an adequate personnel system, and the use for the police and fire departments of an old-style civil service commission which considers itself a trial court. In spite of these handicaps, conservative councilors and managers brought about a steady reduction in debt from 1923 to 1937. The city operates "within its budget and usually nears the end of the year with a substantial surplus." The authors' familiarity with the political setting of the council-manager plan in Portland has contributed enormously to the excellence of this monograph. The discussion of administration is perhaps not as thorough as that pertaining to the political background, the charter, and the council. The conclusions are admirably frank and incisive.—A. W. BROMAGE.

As Professor James Hart has indicated in his *Introduction to Administrative Law*, the enforcement of administrative decisions and remedies against administrative action are in large part opposite sides of the same shield. Yet the latter subject has received far more emphasis than the former. This was hardly strange in an era of "individualism" in which that abstract hero, the individual, was pitted in relentless battle against an alien power, "the government." Recently the consequences of technological-industrial events have tended to make us look upon government as an agency for the protection of the many by the restraint of the few. In this view, the study of sanctions, i.e., the means of making such restraint effective, assumes a new importance. Mr. G. G. Lentz's *The Enforcement of the Orders of State Public Service Commissions* (University of Illinois Press, pp. 159, $2.00) is the first book to appear in this country devoted to that subject. With the preoccupations of a lawyer, Mr. Lentz examines "Early Problems of Enforcement," "Application of Fines and Penalties," "Actions to Compel [specific] Compliance," "Powers [of courts] to Punish for Contempt," "Direct Powers of Enforcement" (i.e., contempt powers of the administrative agency itself), "Prosecuting Officers and Agencies," and "Administrative Review and Procedure." Certainly the book is an

important and valuable contribution on the subject of the law of sanctions —but, in the words of Professor Frankfurter, "we must travel outside the covers of law books to understand [administrative] law." What we need now are statistical studies throwing light on the problem of the relative effectiveness of the various kinds of sanctions. So supplemented, Mr. Lentz's work would be a major contribution.—WALLACE MENDELSON.

A constant stream of pamphlet material is being added to the literature of taxation. Among some of the more recent studies of particular types of taxes are: C. Lowell Harris's *Gift Taxation in the United States* (American Council on Public Affairs, pp. 165, $2.50); L. L. Waters' *Use Taxes and Their Legal and Economic Background* (University of Kansas, Bureau of Business Research, pp. 92); and *Stock Transfer Taxes* (Committee for the Study of Federal and State Stock Transfer Taxes, pp. 155). Professor Harris's study of gift taxes in the United States constitutes what is probably one of the most substantial treatments available on this subject. Gift taxes constitute an ancillary tax problem, but an important one, in that such taxes are designed to buttress the strain and stress that develop as a result of the failure to recognize the acts of transfer of economic interests by gift and accounting to the public under the income and estate taxes. After most careful analysis of the problem presented by this form of tax, the author suggests several interesting proposals which are designed to close the chief loopholes of existing estate and gift taxes, and loopholes which impair the effectiveness of the income tax. He suggests certain general laws, the effect of which would be to broaden the base, increase the effective rate, and improve the administration of such taxation. He suggests also that the laws in question would promote a more satisfactory relationship between the state and federal governments and contribute toward a more satisfactory apportionment of the cost of government, because taxes on gifts and estates, for reasons given in the study, operate with relatively little social and economic harm. In his study of use taxes and their legal and economic background, Professor Waters sets for himself a most ambitious objective. His study is designed to give the lawyer and political scientist an historical summary of the legal problems raised by such use taxes, to survey for administrators the techniques of collection of this legislative problem child, to relate this compensating levy to barriers to interstate trade which have recently been so widely publicized, and to give the business man a detailed description of the valuation of this new component of state fiscal systems. He deals chiefly with use taxes on gasoline and general use taxes, including sales taxes. He cites the use tax and its effects upon trade barriers, describes the methods of collection, analyzes the fiscal significance of the tax, and deals with the problems of legality. The study of stock transfer taxes is largely a report made by Dr.

Paul Studenski, director of research for the Committee for the Study of Federal and State Stock Transfer Taxes. After dealing with the nature and problems of the stock transfer tax generally, the study is divided into two general parts. Part I deals with the European and Canadian taxes on stock transfers, and Part II with American stock transfer taxes. In Part I, the English, Canadian, Dutch, French, and German systems are given detailed attention. Part II, which deals with American stock transfer taxes, considers the problem of the taxable basis, the tax structure, taxation of dealer transactions, interstate competition, and methods of collection. The study constitutes a very careful analysis of the problem of stock transfer taxes. Taken together, the three studies present an interesting analysis of these particular taxes in so far as they affect the relation between states and the relation between states and the federal government. They are the best kinds of research on these problems of taxation, but for the average reader they would appear rather technical and detailed. All three studies, however, are a very definite contribution to the literature of public finance.—JOHN W. MANNING.

Proportional representation is knocked all over the ring by Professor F. A. Hermens of Notre Dame in his *Democracy and Proportional Representation* (Public Policy Pamphlet No. 31, University of Chicago Press, pp. 41, $0.25). Whether or not he succeeds in delivering a "kayo" will depend on the viewpoint with which the reader of his persuasive pamphlet is equipped. He begins with a number of logical arguments: that legislatures are "organs of government" and not purely "representative" bodies; that the majority system "tends to make elections an instrument to achieve 'consensus' rather than a mere 'census';" that P. R. tends to destroy majorities and to multiply parties. This last point is developed at considerable length on the basis of European experience to indicate that by producing extremist parties, proportional representation had much to do with the rise of Mussolini and Hitler. The next to the last section seeks to blast proportional representation in American municipal government, ascribing the difficulties of Mayor LaGuardia with his Board of Estimates and of Cincinnati with its Bigelow to proportional representation. He feels that the larger the city, the more damaging is proportional representation. This section seemed to the writer less convincing than earlier sections, in part because of some loose estimates of the "cost" of proportional representation to New York City. The whole pamphlet, however, is well worth reading if one is not acquainted with Professor Hermens' other publications on the subject. Mr. George H. Hallett, Jr., returns blow for blow in his *Proportional Representation; The Key to Democracy* (National Municipal League, pp. xiv, 177, $0.25), written in collaboration with Clarence G. Hoag, and a completely revised second edition of a volume published in

1937. Curiously, Mr. Hallett takes up many of the American municipal examples used by Professor Hermens and arrives at diametrically opposite conclusions. He also considers most of the arguments advanced by Hermens and rejects them, to his own satisfaction. A large amount of description of proportional representation in American cities is introduced, in addition to a very brief account of proportional representation in foreign countries. The description of American experience is, perhaps, somewhat damaged as scientific evidence by frequent claims to good government as a result of proportional representation when improved standards were in part a result of the city manager plan or other governmental innovations. However, the material is fully and well presented. Both studies are in the pamphleteering tradition. Hallett's is more interestingly written; Hermens' more logical in presentation. Both are provocative to the political scientist, and in literary style and wealth of illustrative material are far above the average of controversial literature.—G. C. S. BENSON.

In his *William E. Chandler, Republican* (Dodd, Mead and Co., pp. xiii, 758, $5.00), Leon Burr Richardson has presented a detailed biography of a political figure who played a prominent part in national and New Hampshire politics for more than half a century. Chandler left a mass of letters and other manuscripts, and the book is based largely on these documents. The reader is given a better and fairer insight into Chandler's many-sided character than has hitherto been afforded. Professor Richardson's researches have led him at times to different conclusions from those reached by other writers, as, for example, Oberholzer and Nevins in the controversy over the part Chandler, as Secretary of the Navy, played in the building of the new navy. Chandler's political career began in 1856 and continued with practically no intermission until his death on November 30, 1917. He was a power in state politics and served for sixteen years as a member of the Republican national committee, eight years as its secretary. He regarded the "saving the presidency to Hayes in 1876" as one of his greatest achievements. A full account of this event is given, as well as of Chandler's bitter opposition to Grant's third-term aspirations, his work as Secretary of the Navy, as senator, and as president of the Spanish Treaty Claims Commission. In addition to the Hayes episode, Chandler took great pride in assisting in securing the soldiers' vote in New Hampshire for President Lincoln in 1864, his rescue of the members of the Greely expedition, and his efforts toward the liberation of Cuba. He was a man of strange contrasts: on the one hand, a waver of the "bloody shirt"; on the other, a life-long foe of corporation control of government and an advocate of liberal reforms in politics to the extent of supporting Senator LaFollette for the presidency. He was of a controversial nature, with the

result that his usefulness as a public servant was, as Professor Richardson says, "less than he honestly intended it to be, or than it easily might have been."—EVERETT S. BROWN.

The subject of labor in war-time is of monumental proportions; and there are two respectable ways of dealing with a monumental subject. One is to deal with it in a monumental way, with exhaustive and scientific detail. The other is to deal with it suggestively. The results, although different, are legitimate and wholesome, provided the spirit in which the results are sought is impartial and scientific. John Steuben's *Labor in War-time* (International Publishers, pp. 159, $1.50) is an essay on the rôle of American labor during the first World War. It is an essay of the suggestive type, but it has been executed in no impartial or scientific spirit. Mr. Steuben set out with a certain point of view—that of discrediting the A. F. of L.'s rôle in the war and justifying the I. W. W.'s—and his prejudices are on some occasions thinly disguised. On the first page of his foreword he asks: "Did post-war developments justify the position of the leaders of the American Federation of Labor in giving unqualified endorsement to the Wilson-Wall Street war aims?" (p. 7). Call it a capitalist peace, if you will. It was all of that. And yet it was more, and Mr. Steuben does not venture to explain why his "Wall Street" financed a bitter campaign against the "Wilson-Wall Street war aims" as embodied in the peace settlement. There are many statements of Mr. Steuben which we would like more specific, and many for which we hunger for citations—although Mr. Steuben's book is not without citations—out of pure interest in the subject. But Mr. Steuben is a cagey writer. Where he is most provocative and belligerent, he is most diffident with his sources. Where, for instance, does he get his information for saying that the federal government "paid all the expenses" for the Minneapolis conference of the Gompers-organized Alliance for Labor and Democracy (p. 113)? And to say that "of all the statesmen of the world, only the leaders of the young Soviet Republic predicted that the Versailles Treaty would be the cause of another and more horrible war" (p. 119) is palpable nonsense. There were other leaders who predicted it also, Clemenceau among them. Can Mr. Steuben be sure that if the will of the Soviet Government had been a little differently cast in 1939 war would certainly have occurred? And was the war upon Finland caused by the Treaty of Versailles? Done in a more scientific way, more could be made of Mr. Steuben's thesis than he himself has made of it. The A. F. of L. leaders swung all too easily behind Wilson's movement to war, and labor suffered bitterly from the aftermath of war.—SMITH SIMPSON.

Evidence of complete realization of the problems facing the planner in the United States is found in the valuable summary contained in *The Pro-*

ceedings of the National Conference on Planning (American Society of Planning Officials, pp. 194, $2.00). In spite of occasional vague excursions into national defense questions, the volume is packed with extraordinarily concise comments on the current problems of physical planning in this country. Moreover, the impact of social conditions upon physical problems is treated in a forthright, realistic manner. The program of the conference included discussions of highway and transport problems, the problems of zoning and decentralization of cities, city planning and housing, tax policy, industrial location, and the relationship of planning to democracy and public education. A significant paper deals with the general question of industrial location as it affects the Pacific Northwest, advocating a regional agency for that area. There is some possibility that the importance of such an agency for industrial development is overrated. Important suggestions are offered regarding the effects of state activity on industrial location. Another discussion describes forcibly the reactions of the political ostrich, California variety, to problems of resettlement. Failure to deal humanely with the migrant worker is resulting in creating problems of community planning which will harass local and state governments for years to come. At several points the failure to coördinate public housing with local planning is discussed rather fully. American experience is evidently repeating the mistakes of a generation of British practice. Several papers describe the increasing importance given to aesthetic considerations in American planning.—LEE S. GREENE.

The American Empire (University of Chicago Press, pp. xi, 408, $4.00), a recent book edited by William H. Haas, is a "study of the outlying territories of the United States." The volume consists of a group of studies made by different individuals selected because of their knowledge of original material, and because they have either lived in the areas discussed or visited them for investigation and study. The volume describes in a very satisfactory manner the geographic and economic background of each territory and weighs its value to the United States. The authors lament the lack of understanding by Americans of the problems existing in these possessions. Events of the last few months have undoubtedly awakened interest in the strategic value of these areas, and should make these studies particularly timely. The major purpose of the writers is to present a graphic description of the natural landscape, the people, the climate, the resources, the industries, and the economic value of the territories in a manner that will arouse interest in them. Success has been attained in this attempt. To the student of government, it seems unfortunate that so little attention is given to the government of the territories and to the ties that bind them to the government at Washington. At a time when the Philippines are on the verge of independence, while other

dependencies are wanting statehood, information of this type would add considerably to the value of the volume.—ROBERT S. RANKIN.

One of the by-products of the work of the President's Committee on Civil Service Improvement is a study by Lewis B. Sims, of the Bureau of the Census, entitled *The Scholarship of Junior Professional Appointees in the Government Service* (mimeographed by the Committee, pp. 228). The undergraduate scholastic records of the 5.1 per cent persons appointed to junior professional positions in the service of the federal government from January, 1935, to March, 1939, were examined and analyzed with Census Bureau thoroughness. The facts led to the conclusion that the government is securing in these junior positions a rather high-grade group of scholars, as indicated by their undergraduate standing. The junior professional persons appointed through the civil service system are better scholastically than those appointed outside of the system. The group studied came from 360 different educational institutions in all parts of the country. The second chapter of the report outlines with painstaking thoroughness the method employed. Eleven separate chapters present data for as many separate professional groups. The social scientists were found to be of the highest caliber of all the groups, indicating that the awareness among teachers of the social sciences of opportunities in government employment in recent years is bearing fruit in directing the interest of the top-ranking students toward federal jobs.—HARVEY WALKER.

Elton D. Woolpert's *Municipal Public Relations* (International City Managers' Association, pp. v, 50, $1.00) is a timely contribution to the developing science of public administration. Its eleven chapters first appeared serially in *Public Management*, from September, 1939, through July, 1940. Too frequently, a government which deserves good public relations, on the basis of its policies and its operating efficiency, incurs public disfavor because it neglects the human factor. Within rigid space limitations, Mr. Woolpert does an excellent job of analyzing the relations between the city government and its citizens and presenting a positive program designed to better those relations. The first step is a comprehensive survey of existing relationships, which must include not only an appraisal of the public's attitudes and opinions, but also a critical examination of the city administration from within. The weaknesses revealed can then be attacked on several fronts: personnel practices; employee contacts with citizens; physical appearance of municipal employees, buildings, and equipment; procedures for handling inquiries and complaints; tax collection methods; etc. In-service training in public relations is discussed intelligently, as are the problems of organization for public relations and municipal reporting. The monograph merits the careful attention of all interested in improved administrative techniques.—FRANK M. STEWART.

In any discussion of what is to be done about the increasing complexities of government in metropolitan areas, examples of what has been done cannot fail to be helpful. Roland M. Ketcham's *Intergovernmental Cooperation in the Los Angeles Area* (University of California at Los Angeles, Bureau of Governmental Research, pp. 61, $0.50), a mimeographed study, provides such an example. Choosing some score of representative functions, the author analyzes each with special attention to the mechanics of inter-jurisdictional collaboration. Because the Los Angeles area is not typical of other metropolitan areas, inasmuch as there is no interstate and practically no inter-county situation, the findings may serve as no more than a guide to students of metropolitan problems elsewhere. However, there is enough examination of factors common to all such regions to warrant listing this monograph as a clarifying contribution to the literature of the subject.—HILTON P. GOSS.

In *The Battle for Municipal Reform, 1875–1900* (American Council on Public Affairs, pp. 91, $2.00), Clifford W. Patton presents a sketch of the salient features of a formative period in American municipal development, the characteristics of which prompted Lord Bryce to label municipal government "the one conspicuous failure of the United States." Chapters on basic conditions and causes, evils of machine politics, arousing citizens to action, the era of reform, the organized movement for better government, improvement of living conditions in the cities, and, better governmental machinery serve to present the story of the "enlistment of public opinion" and the resulting accomplishments thereby made. Less concern is shown for the sources of the ideas used in reform than for the results achieved. Footnote references indicate failure to use valuable source materials, but useful bibliography of primary and secondary materials is presented in the appendix.—H. C. COOK.

FOREIGN GOVERNMENT AND POLITICS

Students of the internal business practice and procedure of governments will find interesting a volume entitled *The Art and Technique of Administration in German Ministries* (Harvard University Press, pp. 191), by Arnold Brecht and Comstock Glaser. The volume deals primarily with the German General Code of Administrative Procedure of 1926, in the development of which the senior of the two authors played a leading part. The Code is translated and discussed. This "Code and the structure of German ministries, although the products of monarchical tradition and democratic experiment, have continued without substantial change under authoritarian rule . . . the technique of administration is not immediately dependent on the political form of government." The national government of the United States does not have such an overhead general code.

Our nearest counterpart is to be found in the manuals of practice and procedure of various agencies, or in the collection of laws, rules, and regulations of central control agencies, and office instructions that together constitute the manuals. They are rarely assembled and formally printed. In many agencies, they are mimeographed. Examination of the German Code to see how the problem of making such a code fits the diversities of the agencies discloses the expected, that many rules must be stated very broadly: "What is to be said is to be said clearly and completely, but not verbosely." The book carries one back to the days of the President's Commission on Economy and Efficiency in the Taft administration, when the internal practices of some of the old departments affecting correspondence and filing were so drastically overhauled, and when expositions of filing equipment and office labor-saving devices were a feature of Washington life. The successors to the Commission on Economy and Efficiency were the Bureau of Efficiency, the Chief Coördinator, the Division of Management in the Budget Bureau, and the numerous procedural divisions in the newer agencies. German practice differs from ours in one interesting particular. Under our system, the common practice is for a matter to be referred to the subordinate officer or employee best qualified to handle it. He drafts a suitable written document ready for the signature of the proper higher official and sends it up the line of authority. Intermediate officers read it and indicate their approval, or if they disapprove arrange for conferences or for revision. When it gets to the top responsible official, he signs it. The Germans send up a rough draft which is edited along the way. The responsible top officer signs the rough draft when it is in a form which satisfies him, and then it goes to a combined copying and filing division which makes the official fair copy, certifies to it, and dispatches it. In the reviewer's governmental experience, most written material goes through as originally drafted. It would seem as if the German system would involve more time and labor. Conceivably the Germans have and want a tighter control over their files than we have had. One of our reforms in the days of the Taft Commission was to classify material and to prevent large expenditures in handling material of minor significance. The comparisons between the structure of German ministries and of our own governmental agencies are interesting but somewhat questionable, since the statements regarding our structure strike this reviewer as greatly over-simplified in the effort to get brief generalizations.—LEWIS MERIAM.

In his *Germany: Jekyll and Hyde* (E. P. Dutton and Co., pp. 318, $2.50), Sebastian Haffner (*pseud.*) attempts to unmask Mr. Hyde, who claims to be Germany as his armies are conquering Europe. Admitting that, at a time when Germany's national frustration matched Hitler's own, large masses of Germans were taken in by the Führer's promises, believing him

to serve an idea while really he was serving only his resentment, career, and theatrical urge, the author today sees a Germany which differs from Hitler's claims. It is a composite of at least four groups of Germans distinguishable by the degree of their adherence to the régime: the Nazis, the loyal population, the disloyal population, and the opposition (not counting the émigrés). To the estimated loyal forty per cent of the population, the maintenance of the Reich is of sufficient importance to make them rationalize themselves into condoning the objectionable aspects of Nazism, while the active Nazi group (twenty per cent) particularly includes those people to whom the "dynamism" of the régime acts as a magnet—the type of personality which during and after the last war acquired a passion for disorder and recklessness and a disdain for the "bourgeois" style of life. The disloyal thirty-five per cent, coming from all social levels, though predominantly from the former organized workers and orthodox Catholics who have retained an instinctive yearning for decency, find themselves enclosed with the supporters of the régime in compulsory organizations, suspected, leaderless, and unable to resort to the classical means of revolt: barricades or general strike. Their passive readiness needs release by some external force. Tiny, scattered groups advocating active opposition (five per cent) achieve little beyond making unpublicized martyrs of their members. If and when Mr. Hyde is forced to surrender, the formula for permanently changing him back into Dr. Jekyll must include, we learn, the revival of autonomous German *Länder* and a "European Concert" of small and middle-sized states held together by an elaborate super-national organization. The book is stimulating and well written. In a few instances (*e.g.*, pp. 48, 60) one would like to see the evidence for the author's assertions.—GERHARD KREBS.

Czechoslovakia: Twenty Years of Independence (University of California Press, pp. 525, $5.00), edited by Professor Robert J. Kerner, of the University of California, is a tribute of scholarship to a country that has suffered tragedy. Though emotion has become somewhat dulled by time and the sequel, the crushing of Czechoslovakian independence may still seem the most flagrant example of Nazi devastation of monuments of politico-social progress. Twenty outstanding American and British scholars (some of Czech extraction) have contributed to this volume designed to record the important contribution of the Czechoslovakian nation to the history of our time in its short span of independence. While motivated by their admiration, the contributors carry out their intention of presenting "an honest, unprejudiced, and frank appraisal." They render the general reader a unique service in compressing into one authoritative volume the basic facts relative to so many phases of the subject: Czechoslovakia's anthropological and historical background, political and constitutional de-

velopment, economic, social, and cultural achievements, foreign relations and in so far as now ascertainable, the course of events leading to political dissolution. The book contains also a poignant commentary on Munich by Karel Čapek, a chronology, and an index. Recurrent in the essays, if not pervasive, is an emphasis upon certain interpretations significant in the contemporary perspective. One is that Czechoslovakia's many-sided achievement received inestimable nutriment from its morally sensitive democracy, and so refuted the thesis that democracy is not socially efficacious. Another inference is that Czechoslovakia's apparent failures, such as the inability to solve her minorities problem, represented fundamentally the failure of a world which intensified her internal difficulties and finally permitted Hitler to exacerbate them deliberately. Yet, as Professor Kerner indicates, Czechoslovakia's downfall, no less than its progress, placed Western democracy in its debt. It revealed the falsity of Hitler's racialist pretensions, unmasked the inordinate extent of his ambitions, and warned the other democracies to prepare their defense.—ALBERT K. WEINBERG.

Mr. Frederic Benham's *Great Britain under Protection* (Macmillan Co., pp. xvi, 271, $2.50) constitutes an important contribution to the economic history of recent years. Published in the "Commercial and Tariff History" Series of the Carnegie Endowment for International Peace, it provides a well documented, closely reasoned account of Britain's adventure in protection. There is a brief history of free trade in Great Britain and of developments with respect to tariff policy during and after the first World War. A description of the tariff follows, and an account of other forms of protection with special reference to ten most protected industries, like wheat, shipbuilding, dyestuffs, steel, etc. One of the important aspects of British policy affecting both Empire relations and commercial policies with regard to the rest of the world is imperial preference, which culminated in the Ottawa Agreements of 1932; and this receives full treatment. Separate chapters deal with monetary policy, with problems of iron and steel, and with agriculture. There is much good material and sound reflection in the chapter on trade agreements, in which the author sees the beginnings of a more liberal policy, the agreement with the United States in November 1938, marking, perhaps, a new turning point—were it not for the outbreak of the war, which "temporarily put an end to all such hopes." Great Britain adopted protection as a policy in 1931, under stress of the depression and in order to alleviate unemployment. Professor Benham inquires carefully into Britain's recovery and finds that the tariff helped somewhat, without becoming, however, a really "significant factor." This is a very scholarly and valuable book.—MICHAEL A. HEILPERIN.

An unusual subject is handled well by Professor William Bradford Willcox in *Gloucestershire; A Study in Local Government, 1590–1640* (Yale Uni-

versity Press, pp. xvi, 348, $3.00). Any study of government or politics not organized around an individual or an institution must necessarily seem at the same time diffuse and incomplete. This is particularly true when the subject of study is a remote and largely rural county during the period when counties had very little collective political life. What the author of the monograph has given us, therefore, is a series of chapters on a number of important topics, drawing his material from fifty years of the county of Gloucester. He wastes little time on general background, either descriptive or historical; and after analyzing the agencies of the central government that affected the county, he describes the civil and the military officers of government of the county itself, and then discusses specific functional areas of government—taxation, "economic regulation" (of local industry), the Forest of Dean, the towns, the parish and poor relief, and the manor. Nothing in the volume changes the familiar picture of local government as largely *ad hoc* administration by justices, but the monograph is an interesting and useful study of what happened in one county during one period.—E. P. CHASE.

It is generally agreed that India is today an awakened and nationally conscious force; but what has brought this about? Nationalism is a complex phenomenon. Bruce Tiebout McCully's *English Education and the Origins of Indian Nationalism* (Columbia University Press, pp. 418, $4.50), asserts, however, that the national consciousness of India was due mainly to English education. The existing system of education was introduced into India to make its people imitation Englishmen, or as Thomas (Lord) Macaulay put it, "English scholars." There was no thought in the mind of the English ruling class of making India a strong and united nation, developing its own potentialities and serving its own destiny. Contrary to English design, and in spite of every obstacle placed in its way, the new education hastened and intensified Indian nationalism. The author, to whom the people of India are only "natives," takes little account of the political and economic factors which also contributed mightily to the rise of Indian nationalism. A more careful study of the history of English occupation of India will show that nationalism in that country—like that of China, Turkey, Persia, or Egypt—is the natural and inevitable reaction to foreign imperialism. The book, in spite of its apparent superficiality and occasional understatements and exaggerations, is literate and readable.—SUDHINDRA BOSE.

Recent trends in the scope and operation of the Japanese government are examined by Charles B. Fahs in *Government in Japan* (Inquiry Series, International Secretariat, Institute of Pacific Relations, pp. xiii, 114, $1.00). After tracing the expansion of governmental regulation and activities over the past decade or two in the promotion and regulation of foreign

trade, economic recovery and security, integration of overseas development and domestic control, national defense, social reform and finance, he briefly describes the "reforms and proposed reforms in the political and administrative machinery of the country in proper relation to the new and complex functions of government which have impelled them." He concludes that the trends are due to factors which are international and not local in character, and that the "strictly internal political trends" are not caused by "militarism" or "totalitarianism." He presses this conclusion rather hard. In her control of education, information, and propaganda, he avers, Japan's position parallels that of Great Britain in the present war. Fahs finally distils from his conclusions some guiding principles for an eventual peace settlement in the Far East. These are neither significant nor helpful.—A. VANDENBOSCH.

INTERNATIONAL LAW AND RELATIONS

In his timely treatise on *International Law and American Treatment of Alien Enemy Property* (American Council on Public Affairs, pp. xvi, 143, $3.00), Dr. James A. Gathings surveys the subject from the days of the ancient Hebrews to the year 1940. He covers the development of the practice prior to the World War (with special attention to that of the United States), the treatment of alien enemy property in Europe during the World War, the policy and practice of the United States during the World War and subsequent years, a comparison of the World War practice of various states, and proposal for a future policy. While the book represents a useful summary of the subject, its scope resulted in some superficiality and prevented the author from producing a definitive study of the treatment accorded alien enemy property by the United States in the period since our entry into the World War. The forty pages devoted specifically to that subject necessarily fall considerably short of presenting the systematic and thoroughgoing analysis which is sorely needed. Dr. Gathings apparently adopts the view that both sequestration and confiscation of alien enemy property were forbidden by international law at the outbreak of the World War in 1914, although in some places he is guilty of a lack of precision in his use of the basic terms "seize," "sequestrate," and "confiscate." He concludes that "the rules of international law must be modified to permit a state to sequestrate private property of enemies or allies of enemies when it goes to war" (p. 124). Probably few, if any, states would concede the existence of any limitation on their right to assert control over alien enemy property within their territory at the outbreak of war. In his Introduction, Professor Borchard, in his usual forthright and candid manner, succinctly outlines the salient problems arising from the seizure and retention of alien enemy property, particularly German property, by the government of the United States.—DURWARD V. SANDIFER.

In *The True Facts about the Expropriation of the Oil Companies' Properties in Mexico* (Mexico City: Government of Mexico, pp. viii, 270), the Mexican government has taken issue with the interpretation of the oil controversy found in the series of pamphlets published by the Standard Oil Company of New Jersey and in Donald Richberg's *The Mexican Oil Seizure*. The charge of illegality of the Mexican seizure is founded primarily on three grounds. First, such seizure was a violation of Mexican municipal law. Second, it was a violation of international law. And third, Mexico is unable to make just compensation for the properties seized. As to the first, it is said that the Mexican Supreme Court was correct in holding that under Mexican law the companies had no property rights in sub-surface oil. It is well established in United States as well as Mexican law that "due to the migratory nature of the oil this does not become the property of the surface owner until it is brought to the surface and reduced to actual possession" (p. 135). United States cases are cited in support of this principle. As to the contention that the seizures violated international law, the thesis of the rebuttal is that "no doctrine exists in the international order establishing any rule of universal acceptance which makes immediate payment (not even deferred) obligatory in cases of expropriation for reasons of public utility" (p. 197). While the fourth chapter seeks to prove Mexico's ability to give adequate compensation for the properties taken. A good statement of aliens' property rights under international law is found in Professor Josef L. Kunz's *The Mexican Expropriations* (New York University School of Law, pp. 64). After summarizing the international law relative to expropriation of the property of aliens generally, the author discusses the Mexican land and oil seizures. Having paraded much evidence, he concludes that "the arguments of Mexico are legally untenable" (p. 60).—WILLIAM M. GIBSON.

Declaring that post-war decades have constituted a "period of truce that was mainly an epoch of secret service," Richard W. Rowan, in his *Terror in Our Time; The Secret Service of Surprise Attack* (Longmans, Green and Co., pp. 10, 438, $3.00) brings up to date his authoritative and fascinating story of the rôle of *agents provocateurs*, propagandists, terrorists, saboteurs, and assassins in world politics. It is only natural that this phase of government activity has expanded greatly in recent years. Stalin and Mussolini were "graduate students" of revolution and conspiracy. Hitler was a spy. Fascism was dedicated to the proposition that force in itself is good. And so, since Versailles, thousands of secret service agents have been waging their underground, undeclared war of terrorism, not only acquiring important information for their governments, but weakening their potential enemies, paving the way for real war, and then playing an indispensable rôle in Blitzkreig activities. With this frame of reference, the au-

thor examines the world scene. Without revealing his sources, he discusses in a popular way the work of the GPU, the OVRA, the Gestapo, and the secret service systems of France and Britain. He introduces the reader to such master technicians as Djerzhinsky, Himmler, and Bocchini. Then he interprets numerous interesting incidents: the assassination of King Alexander; the Reichstag fire; the Italo-Abyssinian affair; civil war in Spain; the fall of Austria, Czechoslovakia, and Poland; intrigue in Palestine; purges in Russia; the Japanese invasion of China; the liquidation of Balboa and von Fritsch; the Munich fiasco; the Graf Spee incident, etc. In stressing the ruthless and terribly effective tactics of fascist agents, the book constitutes a scathing denunciation of fascist government. It is, moreover, a condemnation of the democracies for their failure to comprehend, while there was yet time, the significance of the information furnished them by their secret service operatives. Finally, it is a timely warning to the Western Hemisphere against invading hosts of spies, conspirators, agitators, and saboteurs, many of whom are already within our gates. The book should be read. The warning must be heeded.—FRANCIS O. WILCOX.

One of the results of the Study Meeting of the Institute of Pacific Relations held at Virginia Beach, Virginia, late in 1939 is *Problems of the Pacific* (International Secretariat, Institute of Pacific Relations, pp. 299, $3.50), edited by Kate Mitchell and W. L. Holland. This meeting, unlike the previous conferences of the Institute, had a rather small group of participating individuals. Also, certain countries like the Soviet Union, the Netherlands, and Japan were not represented by any of their nationals. The British and French delegations were much smaller than those in former years. In spite of this reduction in the number of participants, the conference covered an extensive list of questions relating to the Far Eastern conflict. The present summary of the Virginia Beach discussions is introduced with a short chapter entitled "The Impact of the European War on the Far East." Since the conference met in the early months of the European War and the "blitzkrieg" was still the "sitzkrieg," the effect of the collapse of the French and Dutch empires was naturally not on the agenda. This has made the reading of some of the other chapters seem in places, without fault of the Institute of Pacific Relations, like "ancient" history. The editors of this summary have done a very careful piece of work in compiling in unified fashion a readable report. Being the first meeting of the Institute since the "incident" of 1937, much of the discussion is centered around the problem of Japanese aggression in China. Also presented are significant repercussions of this problem on third states such as Great Britain, the Soviet Union, the United States, etc. The final chapter deals mostly with the problems of political adjustment in the Far East, with few pages given to economic adjustment. This over-emphasis on po-

litical adjustment is compensated by the fact that the "documents" (which are really appended monographs) consider, in the main, economic matters precipitated by the Far Eastern conflict. Among these are William C. Johnstone's "The Sino-Japanese Conflict and American Rights and Interests in China", W. Y. Lin's "The Future of Foreign Investments in China," and F. M. Van Asbeck's "The Foreign Relations of the Netherlands Indies." *Problems of the Pacific* concludes with numerous appendices which give lists of personnel, documents presented, programs, *syllabi*, and recent and forthcoming publications of the Institute. Some of the latter have been reviewed in these pages. In these publications, the Institute of Pacific Relations has presented the results of the most comprehensive research project so far set up in relation to the Far East.—WILLIAM BALLIS.

Written without documentation for a public assumed to be familiar with the general history of the Far East since 1842, Nathaniel Peffer's *Prerequisites to Peace in the Far East* (Inquiry Series, International Secretariat, Institute of Pacific Relations, pp. ix, 121, $1.00) is a competent analysis, from what might be called the strictly Western viewpoint, of certain of the causes underlying the present conflict in the Far East, and of conditions prerequisite to the establishment of a durable peace in that area. His general thesis is simple: that most of the troubles which have beset the Far East have been due to the impact of Western capitalistic imperialism, which Japan has accepted and put on like an outer garment, but which China has merely had imposed upon her; and that these troubles can be dissipated by the withdrawal from the Far East of political and economic controls now exercised by Western nations, and by permitting and aiding Japan and China to industrialize as rapidly as possible, without fear of each other or of Western powers. The reader is left to wonder where are those other forces which many believe have been equally important in the making of the elements of conflict in the Far East—some of which, such as the underlying conflict between the Chinese concept of the rule of reason as over against the Japanese idea of Bushido, or the way of force, have made for group attitudes, beliefs, and hostilities that no mere economic adjustments can cure. One has the feeling that Peffer, in justice to the scope of his subject, should have gone farther. Nevertheless, his thesis is ably, even brilliantly, developed. It is adequately oriented both to the past history and current scene of the Far Eastern conflict, and to the even greater conflict concurrently proceeding in Europe. It merits careful and respectful reading.—ERNEST B. PRICE.

The recent appointment of Viscount Halifax, K.G., as the ambassador of Great Britain to the United States makes the former Foreign Secretary's *Speeches on Foreign Policy, 1934–1939* (Oxford University Press,

pp. x, 368, $4.00) of special interest to American readers. For these fifty speeches, many of them official parliamentary statements, include all of the Viscount's major speeches on foreign policy during the five-year period that preceded the present war. The collection has been carefully edited by H. H. E. Craster and was published under the auspices of the Royal Institute of International Affairs. Prefatory notes to each speech explain the circumstances under which it was given and place it in proper historical perspective. The collection offers an unusually good medium through which to trace the development of Viscount Halifax's thought on foreign affairs and through him that of the Conservative party of which he is an outstanding representative. To the degree that one believes that past performance is indicative of ability to interpret present and future events, the speeches also offer a guide as to how far Viscount Halifax's judgment can be trusted today. It is certain that he was a very long time discovering the implications of the fascist revolution in Europe. His speeches are, in fact, clearly representative of that section of Conservative leadership which promoted appeasement and placed its faith in the defense of special British interests by a balance of power rather than by effective support of collective methods of security. No one can doubt that Viscount Halifax is a conscientious and sincere supporter of democracy as he understands it. But many who read his speeches on such subjects as the Hoare-Laval Pact, Spain, or the Munich crisis will hold quite different ideas as to the meaning of the terms democracy and good faith.—WINCHESTER H. HEICHER.

The American Impact on Great Britain, 1898–1914 (University of Pennsylvania Press, pp. ix, 439, $4.00), by Richard H. Heindel, is properly labelled "A Study of the United States in World History." It is based upon extended periods of study in Great Britain, during which the author talked with thousands of people, in addition to amassing an unusual amount of written data. The truly numerous reactions to things American thus collected are woven into fifteen chapters, some of which deal with politics, literature, and education. Several chapters describe the strains and surprises of our business competition, and the last two trace our influence upon British social and cultural history. Fresh sidelights are given upon almost every event in the history of the two pre-1914 decades. The book is not an easy one to digest, because of the very wealth of information it contains, but no one can read it without being certain that we affect other peoples as powerfully, and as variously, as they influence us. It is offered as a pioneer study in international history, in the hope that there will later be "similar works covering almost countless relationships."—D. F. FLEMING.

One of the gratifying characteristics of the series of studies entitled "The Relations of Canada and the United States," prepared under the di-

rection of the Carnegie Endowment for International Peace, is their definitiveness. This derives, no doubt, from the high standards exacted by James T. Shotwell, general editor, and his divisional editors, as well as from the fresh exploration of original sources by vigorous scholars. American political scientists will esteem the two most recent studies for the sharper illumination they cast upon the late colonial and early national periods. In *The Diplomatic History of the Canadian Boundary, 1749–1763* (Yale University Press, pp. xiv, 172, $2.50), Max Savelle, of Stanford University, has drawn almost exclusively upon manuscript sources found in French, British, Canadian, and American archives. Printed sources of primary and secondary character are given in an extensive bibliography (pp. 156–164). The author draws attention to the sociological conflict behind the boundary disputes and its significance to the future United States and Canada (pp. xiii–xiv). In *The United States, Great Britain, and British North America from the Revolution to the Establishment of Peace after the War of 1812* (Yale University Press, pp. xv, 448, $3.25), Professor A. L. Burt "continues the history which he opened up in his other comprehensive volume," *The Old Province of Quebec* (1933). New materials and new interpretations contribute to the value of this vivid study. A bright style and subtle humor distinguish it. Helpful maps appear at appropriate places in both new volumes.—Henry Reiff.

Canada's importance to the future of All-American relations makes any study of that country a welcome addition to the meagre literature which we possess about it. We have been accustomed to think of Canada in terms of her ties to Europe. We are dimly becoming aware of Canada's ties to the American continent. But A. R. M. Lower's *Canada and the Far East—1940* (International Secretariat, Institute of Pacific Relations, pp. 152, $1.25) presents a new challenge by revealing the ties of our northern neighbor to the Orient. Like the United States, Canada's interest in Asia is largely the interest of her west coast provinces because of their export trade, because of their missionaries, and because of an unpopular influx of Japanese immigrants to that area. Sentiment in Canada, like sentiment in the United States, is unofficially pro-Chinese but officially courteous toward Japan. Canada, too, is torn between her defense obligations to England and her fear of Japanese aggression at her back door. The author concludes that while Canada's policy is likely to parallel ours in the Far East, it will probably never be to her best national interest, as it might be to ours, to go to war in the Orient. This book is apparently a pioneer in its subject-matter.—Frances Reinhold Fussell.

Having completed the series of documents relating to Latin America, the *Diplomatic Correspondence of the United States* enters a new field with

the publication of the first of four volumes on *Canadian Relations, 1784–1860* (Washington, Carnegie Endowment for International Peace, Vol. I, 1784–1820. Documents 1–661, pp. xlvii, 947, $5.00). The documents begin with an interchange of correspondence regarding a commercial treaty and end with items relating to the Rush-Bagot Convention. In the early period, many of the documents are concerned with the American effort to get the British out of the frontier posts; others relate to the perennial problem of the boundary from the elusive St. Croix to the mythical source of the Mississippi. Here, too, are items relating to Indian depredations in the Northwest, to English and Canadian concern over Louisiana, to the Treaty of Ghent, and to the post-war boundary adjustments. Dr. Manning's task of selection has been onerous, but he has brought to it the same high devotion to scholarship that has characterized the fifteen volumes in the two preceding series of this monumental work.—W. B. HESSELTINE.

The Geneva Research Centre has issued, as the first of a series dealing with problems of the future peace settlement, a brief study by Maurice Bourquin entitled *Dynamism and the Machinery of International Institutions* (*Geneva Studies*, xi, no. 5, pp. 62, $0.40). It is a dispassionate, carefully-argued evaluation of the international machinery developed in the past twenty years for the settlement of disputes and the promotion of international coöperation. But whether pro-Leaguer, Federal Unionist, or isolationist, the reader will probably not find all of Professor Bourquin's suggestions equally acceptable. Be that as it may, the author, out of his long connection with the League as Belgian representative, individual expert, and professor, has distilled some strong criticisms and some constructive proposals. These proposals may be summed up in the sentence "... a collective diplomacy should be added to bilateral diplomacy." But the substance of what the author has to say cannot be given here without doing violence to it, an injustice to the author, and a disservice to the reader.—JAMES T. WATKINS.

In her *Far Eastern Trade of the United States* (International Secretariat, Institute of Pacific Relations, pp. xii, 116, $1.00), Ethel B. Dietrich continues the Inquiry Series of the Institute. This study of the trade between the United States and Japan, China, Malaya and the Netherlands Indies, and the Philippines is in the form of a brief summary, valuable to both student and casual reader. Numerous tables are presented and carefully analyzed, showing the trends of the last decade as far as the major commodities of trans-Pacific trade are concerned. This emphasis on contemporary matters makes the study more valuable than more extensive works, for recent events tell more than long-time trends. No fixed point of view is

presented, but many possible courses of action are suggested, all of which have value. There are a few minor typographical errors. Miss Dietrich deserves much credit for having digested a great deal of material in order to put it in a form valuable to the busy reader.—ANDREW E. NUQUIST.

POLITICAL THEORY AND MISCELLANEOUS

Like its predecessors, the 1941 (sixth) issue of the *Social Work Year Book* (Russell Sage Foundation, pp. 793, $3.25), edited by Russell H. Kurtz, is a concise encyclopedia of organized activities in social work and related fields. The book contains two major sections. Part I comprises eighty-three articles signed by authorities on the topics discussed. For example, the article on public welfare is written by Fred K. Hoehler, director, American Public Welfare Association; the one on medical care by Dr. I. S. Falk, director, Bureau of Research and Statistics, Social Security Board; that on labor legislation and administration by John B. Andrews, secretary, American Association for Labor Legislation; that on juvenile courts by Frances H. Hiller, field director, National Probation Association; and that on social work as a profession by Arlien Johnson, dean, Graduate School of Social Work, University of Southern California. These topical articles are descriptive of functions and programs rather than of individual agencies. Important developments since the 1939 *Year Book* was published have been emphasized. Each article is concluded by a list of selected references. Part II is a directory of national and state agencies, both governmental and voluntary, the programs of which are related to the subject-matter of Part I. There is also an introduction, and an extensive index. In the ten years since the appearance of the first *Social Work Year Book*, there have been many shifts in social work function and organization. Today the most important agencies are governmental rather than private and voluntary. Public works agencies, employment and social insurance services, specialized forms of aid for various classes of the handicapped, have all been set up with federal and state funds, and have become an established part of American culture. Although private agencies have relinquished many services to public agencies, they remain an important factor in social work and will continue to pioneer in new fields. What effect current preparedness and defense programs will have on the old and more recent services, and what new services will be needed, no one at present can predict. The next *Social Work Year Book* will undoubtedly record many important changes in social work organization. The *Social Work Year Book, 1941*, affords a reliable and comprehensive source of information on all aspects of social work today. All libraries should make it available for social workers, for high school and college students of the social sciences, and for the "ordinary citizen" who often wants and needs accurate material on the subjects covered.—HELEN I. CLARKE.

With the publication of Donald L. Kemmerer's *Path to Freedom; The Struggle for Self-Government in Colonial New Jersey, 1703–1776* (*Princeton History of New Jersey*, Vol. III, Princeton University Press, pp. xvi, 384, $3.75), and of Leonard Lundin's *Cockpit of the Revolution; The War for Independence in New Jersey* (*Princeton History of New Jersey*, Vol. II, Princeton University Press, pp. xviii, 463, $3.75), the colonial history of New Jersey has received at last an adequate, readable, and scholarly treatment. Mr. Kemmerer tells effectively the story of the conflict between the royal governor, acting with the council, and the elected house. This conflict, which continued for more than seventy years, revolved around such issues as money bills, executive salaries, control of expenditures, the paper currency, the suffrage franchise, representation, triennial acts, governors' instructions, officers' fees, and the tenure of judges. The elected house added steadily to its privileges and gained such a position of strength and so much popular support that its adherents successfully took up arms when Britain sought to curb its powers after 1763. Mr. Kemmerer has enlivened the frequently dreary squabbles over political privileges with interesting sketches of the leading actors in the story. Behind the conflicts appear the interests of debtors and small farmers in opposition to merchant creditors and to the proprietors of New Jersey. Mr. Lundin, treating a shorter period, has had more space for a more diversified survey. He first sketches the social, economic, and political life of the province in the 1770's, presenting in chapters 1–3 a description of the colony that is vivid, compact, and pointed. In this discussion are revealed the social and economic forces that divided the people of New Jersey into loyalist and patriot groups. The remainder of the book, devoted chiefly to the military campaigns of the Revolutionary War, will interest most readers for the light it throws upon the impact of war on civil society. Chapter 8, on the state government in wartime, shows the triumph of those democratic principles for which the elected house had been contending since 1703. These two volumes supplement each other well and together make a much-needed contribution to American history.—C. P. NETTELS.

In *Edward Livingston: Jeffersonian Republican and Jacksonian Democrat* (Louisiana State University Press, pp. x, 518, $3.50), William B. Hatcher has written the first full-length study of this notable American political leader since the appearance of Charles H. Hunt's biography nearly four-score years ago. This is a volume in the Southern Biography Series. It is a carefully documented work based on an exhaustive exploration of available manuscript and printed sources. Particularly good use was made of public records. Special pains were taken to gather the evidence relating to Livingston's accounts in the settlement of his indebtedness to the Federal Treasury, the Batture controversy, the preparation of

the civil and other codes for Louisiana, and the drafting of Jackson's proclamation denouncing nullification. Livingston's life was filled with dramatic incident. Of patrician ancestry, he became allied through a shift in family political allegiance with the cause of Jeffersonianism, achieved prominence as a congressman from New York, then as mayor of the same city at the age of thirty-seven, and simultaneously as federal district attorney. Forced to relinquish his city and federal posts because of a shortage in the accounts cared for by a political appointee in the attorney's office, Livingston left for New Orleans in 1803 to begin life anew. Here again his rise was swift and colorful. From the Louisiana legislature he went to the House of Representatives, and then to the Senate, resigning to become Secretary of State, and subsequently minister to France. His lucrative and varied legal practice, his rôle in New Orleans Creole society, his success in winning over the Laffites to the American side on the eve of the British attack on New Orleans, his friendship with Jackson, his relations with Burr, his clash with Jefferson, his interest in social and penal reform, his part in the United States Bank controversy, his efforts to bring Webster into the Jacksonian fold, his diplomatic maneuvers at the court of Louis Philippe—all bear witness to the nature of his many-sided public career. Of his personal life, there is much that lends itself to vivid biography. However, the author has contented himself with telling the story without any striving for literary effect. He has painstakingly organized all the material he could find on Livingston and presented it with clarity and dispassionate objectivity.—SIDNEY I. POMERANTZ.

The City of Man; A Declaration on World Democracy (New York: The Viking Press, pp. 113, $1.00). Issued by Herbert Agar, Frank Aydelotte, G. A. Borgese, Hermann Broch, Van Wyck Brooks, Ada L. Comstock, William Yandell Elliott, Dorothy Canfield Fisher, Christian Gauss, Oscar Jászi, Alvin Johnson, Hans Kohn, Thomas Mann, Lewis Mumford, William Allan Neilson, Reinhold Niebuhr, Gaetano Salvemini. "A new foundation then must be laid for a new democracy—in the firm rock of conviction, deep below the moving sand of opinion. And the concept of a vital democracy must be dissociated from the notion of a disintegrated liberalism. . . . " Thus do the distinguished authors of the *City of Man* give us the key to this all-important book. The last clarion call of democracy was sounded so long ago that democracy was precipitated into the present mortal combat lacking an articulate philosophy and program at once fundamental, reasonable, inspiring, practical, and timely. Twentieth-century democracy, however, is now becoming articulate, and among the restatements of the creed *The City of Man* is, in the opinion of the reviewer, the most compelling and most complete. An analysis of this declaration of total and world democracy is impossible here. So important is every word,

also, that one hesitates to offer a short cut. With some details one may find one's self not in complete agreement. One is not surprised that the part dealing with civil liberties should be a shade less convincing than the rest, when one considers the almost insuperable difficulties of this problem. The book will take its place among the outstanding pronouncements of this age, and should be universally read, especially in the United States, upon which, its authors rightly declare, the burden of its fulfillment must eventually rest. "For here," they remind us, "and almost nowhere else, is man granted the right and duty of being Christian and human."—ELLEN DEBORAH ELLIS.

It is not often that the methods of literary history come consciously to the assistance of political science. But such is the case with Paul Merrill Spurlin's *Montesquieu in America, 1760–1801* (Louisiana State University Press, pp. xii, 302, $3.00). The volume is impressive in the exhaustive use of contemporary sources, and to the author the student of American political ideas should acknowledge a debt. Spurlin believes that the truth about the influence of Montesquieu must be found between those who assert his great impress on American affairs and those who sharply deny his influence on our early thought (p. 34). This volume follows the American fortunes of Montesquieu through the last pre-Revolutionary years, through the Revolution, the formation of state and national constitutions, and into the era of Federalist and Anti-Federalist political controversy. The secret of Montesquieu's influence was rooted in the fact that he explained to Americans in a concise way the British constitution under which they lived (p. 260). But from being an expositor of the British constitution and the principle of the separation of governmental powers he became gradually an expounder of political values on numerous other subjects. On the basis of Spurlin's data, it will be difficult to deny the influence of French ideas upon the course of politics in the United States.—FRANCIS G. WILSON.

The problems of power relationships, leadership, rule-making, and responsibility, as found in large industrial corporations, are analyzed by Marshall E. Dimock and Howard K. Hyde in a report prepared for the Temporary National Economic Committee and printed under the heading, *Monograph No. 11: Bureaucracy and Trusteeship in Large Corporations* (U. S. Government Printing Office, pp. 144). The report is in four parts, dealing respectively with "The Nature and Scope of Big Business," "Causes and Manifestations of Bureaucracy," "Managerial Correctives of Bureaucracy," and "The Implications of Trusteeship." The authors find that large business organizations reveal virtually the same tendencies as large governmental organizations with respect to centralization of control, preoccupation with inner rules and procedures, and incentive for employ-

ees. Trusteeship is found more a theory than a fact, and the report stresses the necessity of devising methods for enforcing managerial responsibility. The authors recommend advice and publicity. In the opinion of the reviewer, the experience of corporate management control, as surveyed in this report, demonstrates the need for somewhat more compelling measures.—HUGH L. ELSBREE.

In *Lazare Carnot, Republican Patriot* (Oxford, O.: Mississippi Valley Press, pp. viii, 393, $4.50), Huntley Dupre has given us a full-length biography of the famous revolutionary figure that shows a careful combing of the sources and a painstaking attempt to present in a pleasing manner the known facts. In spite of these efforts, the result is somewhat disappointing. The author somehow fails to give one an insight into the personality of his subject. Carnot does not seem to live again in these pages. Unless the reader already knew the reputation of Carnot, he might close the book without a vivid realization that Carnot gained immortality as the organizer of victory. He would get little conception of the qualities of Carnot as an administrator. It is highly probably, however, that these faults of an otherwise honest and sound piece of work are due, not to the author, but to the nature of his sources.—C. P. HIGBY.

Nature and Functions of Authority (Milwaukee: Marquette University Press, pp. 78), by Yves R. Simon, is a study of the significance and the justification of authority in terms of philosophy. Drawing largely on St. Thomas Aquinas, the author declares that, "considered in its essential function, as identical with the prudence of society in its collective action, authority is the everlastingly good principle of the social unity in the pursuit of the common good." The exercise of authority is justified "wherever the welfare of the community requires a common action"; but it must find its limit" wherever a task can be satisfactorily achieved by the initiative of the individual or that of small social units"—on which basis totalitarianism is condemned. Thus by the spirit of St. Thomas, which illumines every page, is light shed on the contemporary scene. And reading, one recognizes anew the ageless genius of this greatest of mediaeval philosophers.—ELLEN DEBORAH ELLIS.

A new edition of J. Franklin Jameson's *The American Revolution Considered as a Social Movement* (pp. 100, $1.75) has been published by the Princeton University Press. Consisting of four lectures published originally in 1926, the volume points the way to further studies in a neglected aspect of the Revolution.—W. REED WEST.

RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CLYDE F. SNIDER
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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